Visas: collection of biometric identifiers, organisation of the reception and processing of visa applications, organisation of Member States consular offices for the implementation of the Visa Information System VIS

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The Committee on Civil Liberties, Justice and Home Affairs adopted a report drafted by Sarah **LUDFORD** (ALDE, UK) and made several amendments to the proposal for a regulation of the European Parliament and of the Council amending the Common Consular Instructions on visas for diplomatic missions and consular posts in relation to the introduction of biometrics including provisions on the organisation of the reception and processing of visa applications. Several amendments aimed to ensure a correlation between this proposal and the relevant provisions of the VIS Regulation.

The main amendments are as follows:

VIS: Member State may also represent one or more other Member States solely for the reception of applications and the enrolment of biometric identifiers. Where it receives an application, the representing Member State shall create the application file in the VIS and insert the data referred to in the VIS Regulation. It shall then inform the consular post of the represented Member State of the application and the VIS entry through the VIS communication infrastructure as provided for in the VIS Regulation. The committee states that the underlying rationale of the idea to roll out the VIS in particular regions is that all consulates of the Member States start using the VIS at the same time. This implies that all consulates have access to the VIS. Introducing the basic visa data directly into the VIS is the best guarantee for ensuring data security, in particular as regards the transmission of biometric data.

Conduct of staff involved in visa applications: applicants must be received courteously by all staff involved in visa applications. All staff shall fully respect the human dignity and integrity of the applicant. Any measures taken shall be proportionate to the objectives pursued. Staff shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Fingerprinting: the decision as to whether fingerprinting is impossible must always be taken by the duly authorised staff of the diplomatic mission or consular post of the Member State. Furthermore, should the impossibility be temporary, the applicant shall be required to give fingerprints at the following application. Consular staff shall be entitled to ask for further clarification of the reasons for the temporary impossibility. The fact that fingerprinting is physically impossible shall not influence the grant or refusal of a visa.

Scanned photographs: for persons under the age of 12, scanned photographs shall be used which do not require them to appear in person.

Exceptions: exceptions include children under the age of 12 (rather than 6). The exemption from the requirement to give fingerprints for children and the elderly, and in particular the age range for the taking of fingerprints, shall be reviewed three years after the start of operation of the VIS. The Commission shall present a report which shall in particular cover the experience of the VIS with regard to the taking and use of fingerprints from children aged 12 and over and a detailed technical assessment of the reliability of

taking and using the fingerprints of children under the age of 12 for identification and verification purposes in a large-scale database such as the VIS. The report shall incorporate an extended impact assessment of lower and higher age limits for requiring fingerprints, including social, ergonomic and financial aspects.

Outsourcing: in the case of outsourcing, consular officials must be present to supervise the external service provider. Their presence safeguards the public nature of the visa issuing process. Furthermore, it has been clarified that in the case of outsourcing, the final responsibility for the processing of data and for any breaches of the contract lies with Member States. The external service provider must return the passport to the applicant or to a legal representative at the end of the procedure.

Written contracts with external service provider: the committee stipulated certain additional matters which such contracts should cover, such as requiring the service provider to record any complaints from applicants on data misuse or unauthorised access. A model contract shall be established within local consular cooperation.

The **fee** paid by the applicant shall not exceed the fee set out in the text irrespective of whether Member States cooperate with external service providers. The Commission had referred to the total amount of fees charged by the external service provider.

Information campaign: a new clause states that shortly before the VIS is brought into operation in a third country, the diplomatic missions or consular posts of Member States together with the delegation of the Commission shall launch a campaign informing the general public about the objectives pursued, the data stored in and the authorities having access to the VIS, and the rights of visa applicants.

Member States' responsibilities: a new part is added on general responsibilities for Member States. A provision on the status of documents, data and biometric identifiers is important in order to ensure that they will benefit from consular protection. A provision on training is necessary, given the specific expertise the enrolment of biometrics requires. Rules on liability and penalties are necessary in view of potential damage resulting from acts violating this Regulation. The wording has been clarified to bring it into conformity with the wording in the VIS Regulation.

Report and review: three years after the VIS is brought into operation and every four years thereafter, the Commission must present a report on the implementation of the Regulation, including the implementation of the enrolment of biometric identifiers, the appropriateness of the ICAO standard chosen, compliance with data protection rules, experience with external service providers with specific reference to the collection of biometric data, the principle of the "first application" and the organisation of the reception and the processing of visa applications. The report shall also include: the cases in which fingerprints could factually not be provided or were not required to be provided for legal reasons compared with the number of cases in which fingerprints are taken; and information on cases in which a person who could factually not provide fingerprints was refused a visa.

Other amendments are the following :

- the word 'aliens' should be replaced by the word 'applicants' throughout the text, since this is the word used in the VIS Regulation;

- a reference to the Charter of Fundamental Rights has also been added ;

- it will be possible to copy biometric data from the first application within a period of 59 (rather than 48 months) months from the start of the retention period provided for in the VIS Regulation;

- given in particular the risks for data security and data protection linked to the taking of biometrics, some amendments ensure that any activity linked to the issuing of visas takes place in a building enjoying diplomatic or consular protection. This is the case both for Common Application Centres and external service providers.

- a reference is made to the common Schengen visa internet site;

- on information on visa applications, the Committee inserted the relevant provisions from the Visa Code proposal.