

Schengen Borders Code: use of the Visa Information System (VIS) at the external borders

2008/0041(COD) - 14/01/2009 - Final act

PURPOSE: to amend Regulation (EC) No 562/2006 as regards the use of the Visa Information System (VIS) under the Schengen Borders Code and to establish common rules applicable to the use of the VIS at the external borders.

LEGISLATIVE ACT: Regulation (EC) No 81/2009 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.

CONTENT: [Regulation \(EC\) No 562/2006](#) establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) lays down the conditions, criteria and detailed rules governing checks at border crossing points and surveillance at the border, including checks in the Schengen Information System.

[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) aims at improving the implementation of the common visa policy. It also provides that the purposes of the VIS include facilitating both checks at external border crossing points and the fight against fraud.

Since only a verification of fingerprints can confirm with certainty that a person wishing to enter the Schengen area is the person to whom the visa has been issued, provision should be made for the use of the VIS at external borders.

That is the aim of this Regulation which amends, to that effect, Regulation (EC) No 562/2006.

The main amendments adopted by the Parliament and the Council following an agreement reached at first reading can be summarised as follows:

Principle of a systematic search in the VIS: Article 7(3) of Regulation No 562/2006 is amended so that any third country national entering the territory of a Member State shall be subject to thorough checks on entry, which shall 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)**. To that end, border guards should use all necessary information available, including data which may be consulted in the VIS, in order to verify whether the entry conditions for third-country nationals are fulfilled. The use of the VIS should entail a systematic search in the VIS using the number of the **visa sticker in combination with** a verification of **fingerprints**.

Derogation: given the potential impact of such searches on waiting times at border crossing points, Parliament insisted that it should be possible, for a transitional period by way of derogation and in strictly defined circumstances, to consult the VIS **without a systematic verification of fingerprints**. Member States should ensure that this derogation is used only where the conditions are fully met and that the duration and frequency of application of this derogation is kept to a strict minimum at the individual border crossing points.

The conditions which must be satisfied are:

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when traffic of such intensity arises that the waiting time at the border crossing point becomes excessive;

- all resources have already been exhausted in terms of staff, facilities and organisation;
- an assessment has been made that there is no risk related to internal security and illegal immigration.

In such cases, the VIS may be consulted using the number of the visa sticker in all cases and, on a random basis, the number of the visa sticker in combination with the verification of fingerprints. However, in all cases where there is doubt as to the identity of the holder of the visa and/or the authenticity of the visa, the VIS shall be consulted systematically using the number of the visa sticker in combination with the verification of fingerprints.

This derogation may only be applied provided that the aforementioned conditions have been satisfied.

Evaluation and implementation of the derogation: each Member State shall transmit once a year a report on the application of the derogation to the European Parliament and the Commission, which should include the **number of third-country nationals** who were checked in the VIS using the number of the visa sticker only and the length of the waiting time. The derogation will apply for a maximum period of **three years**, beginning three years after the VIS has started operations. The Commission shall, before the end of the second year, transmit to the European Parliament and the Council an evaluation of their implementation. On the basis of that evaluation, the European Parliament or the Council may invite the Commission to propose appropriate amendments to the Regulation.

ENTRY INTO FORCE: this Regulation shall enter into force on 24/02/2009. The date for its application is linked to the date of entry into force of the VIS Regulation (Regulation (EC) No 767/2008).