Basic information

2008/0041(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Schengen Borders Code: use of the Visa Information System (VIS) at the external borders Amending Regulation (EC) No 562/2006 2004/0127(COD) **Subject** 7.10.02 Schengen area, Schengen acquis 7.10.04 External borders crossing and controls, visas 7.30 Police, judicial and customs cooperation in general	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	BREJC Mihael (PPE-DE)	08/04/2008

Committee for opinion	Rapporteur for opinion	Appointed
AFET Foreign Affairs	The committee decided not to give an opinion.	
DEVE Development	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2908	2008-11-27

European Commission

Commission DG	Commissioner
Justice and Consumers	BARROT Jacques

Key events

Date	Event	Reference	Summary
22/02/2008	Legislative proposal published	COM(2008)0101	Summary
11/03/2008	Committee referral announced in Parliament, 1st reading		

29/05/2008	Vote in committee, 1st reading		Summary
02/06/2008	Committee report tabled for plenary, 1st reading	A6-0208/2008	
01/09/2008	Debate in Parliament		
02/09/2008	Decision by Parliament, 1st reading	T6-0383/2008	Summary
02/09/2008	Results of vote in Parliament		
27/11/2008	Act adopted by Council after Parliament's 1st reading		
14/01/2009	Final act signed		
14/01/2009	End of procedure in Parliament		
04/02/2009	Final act published in Official Journal		

Technical information

Procedure reference	2008/0041(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amending Regulation (EC) No 562/2006 2004/0127(COD)
Legal basis	EC Treaty (after Amsterdam) EC 062-p2-aa
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/59960

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE405.724	18/04/2008	
Amendments tabled in committee		PE406.119	15/05/2008	
Committee report tabled for plenary, 1st reading/single reading		A6-0208/2008	02/06/2008	
Text adopted by Parliament, 1st reading/single reading		T6-0383/2008	02/09/2008	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	03676/2008/LEX	14/01/2009	

European Commission

Document type	Reference	Date	Summary
	COM(2008)0101		

Legislative proposal		22/02/2008	Summary
Commission response to text adopted in plenary	SP(2008)6073	17/10/2008	

Additional information		
Source	**Document**	**Date**
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act	
Regulation 2009/0081 OJ L 035 04.02.2009, p. 0056	Summary

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:

- 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).

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

2008/0041(COD) - 02/09/2008 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted, by 567 votes to 75 and 49 abstentions, a legislative resolution amending the proposal for a regulation 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. The report had been tabled for consideration in plenary by Mihael **BREJC** (EPP-ED, SI) on behalf of the Committee on Civil Liberties, Justice and Home Affairs. The amendments were the result of a compromise between Parliament and Council.

These amendments, adopted under 1st reading of the codecision procedure, introduce a **derogation** to the general approach recommended by the proposal. Parliament stated that 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. However, given the potential impact of such searches on waiting times at border crossing points, 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:

- when traffic of such intensity arises that the waiting time at the border crossing point becomes excessive; and
- all resources have already been exhausted in terms of staff, facilities and organisation; and
- 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

Parliament further specified that the decision to consult the VIS shall be taken by the border guard in command at the border crossing point or at a higher level. The Member State concerned shall immediately notify the other Member States and the Commission of any such decision.

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.

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

2008/0041(COD) - 22/02/2008 - Legislative proposal

PURPOSE: to develop an integrated border management of the EU's borders through the adoption of common rules on the use of VIS.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: rules on the conditions, criteria and checks at border crossing points; surveillance at the border; and checks in the Schengen Information System (SIS) are set out in Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (See COD/2004/0127).

Complementing the Schengen Borders Code Regulation, is the proposed Visa Information System (VIS) Regulation that seeks to improve the implementation of a common visa policy. (See COD/2004/0287). Once adopted, the VIS Regulation will facilitate both checks at external border crossing points and the fight against fraud.

At the same time the Commission has tabled a proposal for a Regulation amending the Common Consular Instructions (CCI) on visas for diplomatic and consular posts relating to the introduction of biometrics, including provisions on the organisation and processing of visa applications. (See COD /2006/0088).

The VIS Regulation (Article 18) specifies that border guards will be allowed to search the VIS for verification purposes by using a number affixed to the visa sticker. This can be done in combination with the visa holder's fingerprints. This search may be carried out using the visa sticker number only but for a maximum period of three years only following the start of operations.

However, given that a biometric check is the only reliable way to confirm, with certainty, that the person wishing to enter the Schengen area is the one to whom the visa has been issued, it is necessary that a systematic consultation of the VIS – that includes a biometric check and not just a number check – should be performed for each visa holder.

It should be noted that external border guards are not be obliged to use the VIS. Indeed, the VIS Regulation does not, and cannot, contain provision on the obligations to use the VIS at the external borders. One consequence of this could be that those border crossing points where the VIS is not systematically used will be exploited by illegal immigrants and criminals. Further, failure to use the VIS on a systematic basis could lead to considerable inefficiencies.

CONTENT: the purpose of this proposal, therefore, is to complement the VIS Regulation by establishing common rules on the use of the VIS at the EU' s external borders. It is to be done by amending Regulation (EC) No 562/2006.

In short, the proposed provisions include:

- rules on the use of the VIS for (i) entry checks; (ii) exit checks; and (iii) identification;
- compulsory consultation of the VIS for verification purposes at entry, in cases where the third country national holds a visa specified in the Schengen Borders Code (Article 5 (1) (b));
- paragraphs determining the optional use of the VIS;
- verification during exit checks and for identification during entry and exit checks; and
- rules on the when consultations of the VIS should commence at external borders.

In accordance with specifications set out in the Schengen acquis the proposed Regulation will apply to Iceland, Norway and Switzerland. Denmark will not be participating in the adoption of the proposed Regulation; not will the United Kingdom and Ireland.