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Committee on Civil Liberties, Justice and Home Affairs

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AMENDMENTS 22-47

Draft report

(PE 370.254v01-00)

Sarah Ludford

Proposal for a Council decision concerning access for consultation of the Visa Information System (VIS) by the authorities of Member States responsible for internal security and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences

Proposal for a decision (COM(2005)0600 – C6 0053/2006 – 2005/0232(CNS))

Draft legislative resolution

Amendment by Sylvia-Yvonne Kaufmann

Amendment 22
Paragraph 4 a (new)

4a. Calls on the Council to ensure that this decision enters into force only after Council Framework Decision 2005/XX/JI on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters has entered into force;

Or. de

Justification

It is extremely important that the Framework Decision should already be in force before this decision enters into force. Here too, therefore, this should be stressed so that it becomes the basis for Parliament's resolution.

Amendment by Sylvia-Yvonne Kaufmann

Amendment 23

Recital 1

(1) Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS) established the VIS as a system for the exchange of visa data between Member States. The establishment of the VIS represents one of the key initiatives within the politics of the European Union in the area of Justice, Freedom and Security. **One of the objectives** of the VIS is to contribute towards improving the administration of the common visa policy **and towards** internal security and **to** combating terrorism.

(1) Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS) established the VIS as a system for the exchange of visa data between Member States. The establishment of the VIS represents one of the key initiatives within the politics of the European Union in the area of Justice, Freedom and Security. **The objective** of the VIS is to contribute towards improving the administration of the common visa policy. **Improving** internal security and combating terrorism **are derived benefits of the system.**

Or. en

Justification

There should be a clear distinction between the primary purpose of the VIS and derived benefits.

Amendment by Stavros Lambrinidis

Amendment 24

Recital 1

(1) Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS) established the VIS as a system for the exchange of visa data between Member States. The establishment of the VIS represents one of the key initiatives within the politics of the European Union in the area of Justice, Freedom and Security. **One of the objectives of the VIS is to contribute towards** improving the administration of the common visa policy and towards internal security and to combating terrorism.

(1) Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS) established the VIS as a system for the exchange of visa data between Member States. The establishment of the VIS represents one of the key initiatives within the politics of the European Union in the area of Justice, Freedom and Security. **The VIS should have the purpose of** improving the administration of the common visa policy, and **should also contribute** towards internal security and to combating terrorism **under strictly prescribed and monitored circumstances.**

Or. en

Amendment by Ioannis Varvitsiotis

Amendment 25

Recital 3

(3) It is essential in the fight against terrorism and other serious criminal offences for the relevant services to have the fullest and most up-to-date information in their respective fields. The Member States' competent national services need information if they are to perform their tasks. The information contained in the VIS may be important for the purposes of preventing and combating terrorism and serious crimes and should therefore be available for consultation by the authorities responsible for internal security.

(3) It is essential in the fight against terrorism and other serious criminal offences for the relevant services to have the fullest and most up-to-date information in their respective fields. The Member States' competent national services need information if they are to perform their tasks. The information contained in the VIS may be important for the purposes of preventing and combating terrorism and serious crimes and should therefore be available, ***subject to the conditions set out in this Decision***, for consultation by the authorities responsible for internal security.

Or. el

Justification

Account must always be taken of the conditions under which the VIS database is accessible in the context of investigating serious criminal offences.

Amendment by Ioannis Varvitsiotis

Amendment 26

Recital 6

(6) It is necessary to define the competent Member States' authorities responsible for internal security and the central access points, duly authorised staff of which are to have access for consultation to the VIS data for the specific purposes of the prevention, detection and investigation of terrorist offences and the types of crime and the offences in respect of which Europol is competent, to the extent necessary for the performance of their tasks.

(6) It is necessary to define the competent Member States' authorities responsible for internal security and the central access points, duly authorised staff of which are to have access for consultation to the VIS data, ***subject to the conditions laid down in this Decision***, for the specific purposes of the prevention, detection and investigation of terrorist offences and the types of crime and the offences in respect of which Europol is competent, to the extent necessary for the performance of their tasks.

Or. el

Justification

Account must always be taken of the conditions under which the VIS database is accessible in the context of investigating serious criminal offences.

Amendment by Martine Roure and Michael Cashman

Amendment 27

Recital 7

(7) For the purposes of protection of personal data, and in particular to exclude routine access, the processing of VIS data should only be in specific cases. The authorities responsible for internal security and Europol should thus only search data contained in the VIS on the basis of reasonable grounds and factual indications.

(7) For the purposes of protection of personal data, and in particular to exclude routine access, the processing of VIS data should only be in specific cases. The authorities responsible for internal security and Europol should thus only search data contained in the VIS on the basis of reasonable grounds and factual indications ***and when they can prove on the basis of established facts that the processing of VIS personal data is really necessary for purposes of prevention, investigation, detection or prosecution in connection with criminal offences.***

Or. fr

Justification

It is important to emphasise the principle that data may only be used for a clearly defined purpose.

Amendment by Ioannis Varvitsiotis

Amendment 28

Recital 7

(7) For the purposes of protection of personal data, and in particular to exclude routine access, the processing of VIS data should only be in specific cases. The authorities responsible for internal security and Europol should thus only search data contained in the VIS ***on the basis of reasonable grounds and factual indications.***

(7) For the purposes of protection of personal data, and in particular to exclude routine access, the ***accessing and*** processing of VIS data should only be in specific cases. The authorities responsible for internal security and Europol should thus only search data contained in the VIS ***under the conditions laid down in this Decision.***

Or. el

Justification

Account must always be taken of the conditions under which the VIS database is accessible in the context of investigating serious criminal offences.

Amendment by Sylvia-Yvonne Kaufmann

Amendment 29
Recital 7 a (new)

(7a) The data protection provisions of this Decision complement the provisions of the Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters (2005/XX/JI) which must be in force before this Decision can enter into force.

Or. en

Justification

The amendment adds the content of Article 13 (2) (b) of the Commission proposal to the recitals.

Amendment by Stavros Lambrinidis

Amendment 30
Article 1

This Decision lays down the conditions under which Member States' authorities responsible for internal security and the European Police Office may obtain access for consultation of the Visa Information System for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences.

This Decision lays down the conditions under which Member States' authorities responsible for internal security and the European Police Office may obtain, ***under specific circumstances and strict safeguards, on a case by case basis,*** access for consultation of the Visa Information System for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences.

Or. en

Amendment by Ioannis Varvitsiotis

Amendment 31
Article 3, paragraph 1

1. The authorities responsible for internal security which are authorised in each Member State to access VIS data pursuant to this Decision shall be as set out in the Annex.

1. The authorities responsible for internal security which, ***after approval by the competent judicial authority***, are authorised in each Member State to access VIS data pursuant to this Decision shall be as set out in the Annex.

Or. el

Justification

There must be judicial control of the various investigations and requests for access to the VIS database in order to prevent systematic uncontrolled access.

Amendment by Ioannis Varvitsiotis

Amendment 32
Article 4, paragraph 3

3. Each central access point shall consult the VIS on behalf of the authorities responsible for internal security in the Member State by which it was designated.

3. Each central access point shall consult the VIS on behalf of the authorities responsible for internal security in the Member State by which it was designated, ***and after authorisation by the competent judicial authorities***.

Or. el

Justification

There must be judicial control of the various investigations and requests for access to the VIS database in order to prevent systematic uncontrolled access.

Amendment by Martine Roure and Michael Cashman

Amendment 33

Article 5, paragraph 1, subparagraph (a) a (new)

(aa) access for consultation may take place only case by case, in established circumstances, for defined purposes;

Or. fr

Justification

It is important to recall that the competent authorities' access to data which have not been collected for the purpose of preventing and detecting criminal offences must take place case by case and in accordance with the principle of purpose, in order to prevent any routine access.

Amendment by Stavros Lambrinidis

Amendment 34

Article 5, paragraph 1, point (b)

b) access for consultation must be necessary for the purpose of the prevention, detection or investigation of terrorist offences or other serious criminal offences;

b) access for consultation must be necessary, ***adequate and proportionate*** for the purpose of the prevention, detection or investigation of terrorist offences or other serious criminal offences;

Or. en

Amendment by Ioannis Varvitsiotis

Amendment 35

Article 5, paragraph 1, point (d a) (new)

(d a) on the basis of the preceding conditions, access must be authorised by the competent judicial authorities.

Or. el

Justification

There must be judicial control of the various investigations and requests for access to the VIS database in order to prevent systematic uncontrolled access.

Amendment by Sylvia-Yvonne Kaufmann

Amendment 36
Article 5, paragraph 2 a (new)

(2a) The data fields pursuant to paragraph 2(e), 'Purpose of travel', and 2(i), 'Photographs', may each be used only in combination with another data field.

Or. de

Justification

This is intended to counteract the danger of 'profiling' and eliminate sources of error regarding matching of photographs, which still frequently occur at the present stage of technical progress (cf. also p. 4 of the opinion of the European Data Protection Supervisor). This amendment is related to Article 5(2) a (new) proposed by the rapporteur, Baroness Ludford.

Amendment by Ioannis Varvitsiotis

Amendment 37
Article 6, paragraph 1 , point (a)

(a) subject to the same conditions as referred to in Article 5 (1) (b) to **(d)**; and

(a) subject to the same conditions as referred to in Article 5 (1) (b) to **(da)**; and

Or. el

Justification

There must be judicial control of the various investigations and requests for access to the VIS database in order to prevent systematic uncontrolled access.

Amendment by Ioannis Varvitsiotis

Amendment 38
Article 6, paragraph 2a (new)

2 a. Article 8 on the protection of personal data and Article 10 on the keeping of records of this Decision shall also apply in this case.

Or. el

Justification

To achieve the objective of data protection.

Amendment by Sarah Ludford

Amendment 39
Article 8, paragraph 1

1. The Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters (2005/XX/JI) shall apply to the processing of personal data pursuant to this Decision. The processing of personal data shall be supervised by the independent national Data Protection Supervisory authority or authorities as provided for in Article 30 of that Council Framework Decision.

1. The Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters (2005/XX/JI) shall apply to the processing of personal data pursuant to this Decision. The processing of personal data **by Member States** shall be supervised by the independent national Data Protection Supervisory authority or authorities as provided for in Article 30 of that Council Framework Decision.

Or. en

Justification

This amendment replaces amendment 9.

It should be made explicit that this paragraph concerns the processing of personal data by Member States.

Amendment by Sylvia-Yvonne Kaufmann

Amendment 40
Article 8, paragraph 1

1. The Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters (2005/XX/JI)

1. The Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters (2005/XX/JI)

shall apply to the processing of personal data pursuant to this Decision. The processing of personal data shall be supervised by the independent national Data Protection Supervisory authority or authorities as provided for in Article 30 of that Council Framework Decision.

shall apply to the processing of personal data pursuant to this Decision. The processing of personal data shall be supervised by the independent national Data Protection Supervisory authority or authorities as provided for in Article 30 of that Council Framework Decision. ***This applies also to authorities responsible for internal security of a Member State to which the VIS Regulation does not apply.***

Or. en

Justification

It is important to emphasize the fact that the Council Framework Decision, mentioned in paragraph 1 of this Article, also applies to those Member States, which do not fall under the VIS Regulation, that is, these Member States also have to process personal data according to the rules laid down in the Council Framework Decision.

Amendment by Martine Roure and Michael Cashman

Amendment 41
Article 8, paragraph 2

2. The processing of personal data by Europol pursuant to this Decision shall be in accordance with the Europol Convention and supervised by the independent joint supervisory body established by Article 24 of the Convention.

2. The processing of personal data by Europol pursuant to this Decision shall be in accordance with the Europol Convention ***and the Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (2005/XX/JAI)*** and ***shall be*** supervised by the independent joint supervisory body established by Article 24 of the Convention.

Or. fr

Justification

The European Parliament's report on the Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (2005/XX/JAI) provides, ultimately, for convergence between the protection rules laid down in the Europol Convention and those laid down in the Framework Decision.

Amendment by Martine Roure and Michael Cashman

Amendment 42
Article 8, paragraph 5

5. The transfer of personal data obtained from accessing the VIS by authorities responsible for internal security and by Europol shall be prohibited, except where the data is transmitted to competent authorities responsible for internal security of Member States, under the conditions and for the purposes of Articles 5 and 6 and in full accordance with the applicable rules on the protection of personal data as referred to in this Article.

5. The transfer of personal data obtained from accessing the VIS by authorities responsible for internal security and by Europol shall be prohibited, except where the data is transmitted to competent authorities responsible for internal security of Member States, under the conditions and for the purposes of Articles 5 and 6 and in full accordance with the applicable rules on the protection of personal data as referred to in this Article. ***The national authority or authorities responsible for monitoring data protection shall ensure that any subsequent data transfer to another competent authority of a Member State accords with the original purpose for which the data were consulted.***

Or. fr

Justification

A subsequent data transfer must not create a gap in data protection. Subsequent transfer must be possible only if the receiving competent authority is pursuing the same purpose as that for which the data were first consulted in the VIS.

Amendment by Stavros Lambrinidis

Amendment 43
Article 8, paragraph 7 a (new)

7 a. Member States shall provide for effective, proportionate and dissuasive criminal sanctions for offences committed with intent which constitute serious infringements of provisions adopted pursuant to this Decision.

Dissuasive measures, which may include criminal and/or administrative sanctions, shall also be provided for serious negligence on the part of authorised users.

Amendment by Sylvia-Yvonne Kaufmann

Amendment 44
Article 10, paragraph 3 a (new)

3 a. This article applies also to authorities responsible for the internal security of a Member State to which the VIS Regulation does not apply.

Or. en

Justification

It is important to emphasize the fact that the Council Framework Decision, mentioned in paragraph 1 of this Article, also applies to those Member States, which do not fall under the VIS Regulation, that is, these Member States also have to process personal data according to the rules laid down in the Council Framework Decision.

Amendment by Sarah Ludford

Amendment 45
Article 12, paragraph 1

1. The Commission shall ensure that systems are in place to monitor the functioning of the VIS pursuant to this Decision against objectives, in terms of outputs, cost-effectiveness ***and*** quality of service.

1. The Commission shall ensure that systems are in place to monitor the functioning of the VIS pursuant to this Decision against objectives, in terms of outputs, cost-effectiveness, quality of service ***and lawfulness of processing.***

Or. en

Justification

This amendment is only a clarification. It replaces amendment 19.

Amendment by Sarah Ludford

Amendment 46
Article 12, paragraph 2

2. Two years after the VIS starts operations and every two years hereafter, the Commission shall submit a report to the European Parliament and to the Council on the technical functioning of the VIS pursuant to this Decision. That report shall include information on the performance of the VIS against quantitative indicators predefined by the Commission.

2. Two years after the VIS starts operations and every two years hereafter, the Commission shall submit a report to the European Parliament and to the Council on ***the lawfulness of processing and*** the technical functioning of the VIS pursuant to this Decision. That report shall include ***an evaluation of the records referred to in Article 10 and*** information on the performance of the VIS against quantitative indicators predefined by the Commission. ***It shall be examined by the European Parliament and the Council. Member States and Europol shall answer any questions raised by the institutions in this context.***

Or. en

Justification

This amendment replaces amendment 20. It only adds that Europol shall answer questions raised by the institutions as well.

Amendment by Sarah Ludford

Amendment 47

Article 12, paragraph 3

3. Four years after the VIS starts operating and every four years thereafter, the Commission shall produce an overall evaluation of the VIS pursuant to this Decision. This evaluation shall include an examination of the results achieved against objectives and an assessment of the continuing validity of the underlying rationale behind this Decision and any implications for future operations. The Commission shall submit the evaluation reports to the European Parliament and the Council.

3. Four years after the VIS starts operating and every four years thereafter, the Commission shall produce an overall evaluation of the VIS pursuant to this Decision. This evaluation shall include an examination of the results achieved against objectives, ***including the lawfulness of processing*** and an assessment of the continuing validity of the underlying rationale behind this Decision and any implications for future operations. The Commission shall submit the evaluation reports to the European Parliament and the Council. ***They shall be examined by the European Parliament and the Council. Member States and Europol shall answer any questions raised by the institutions in***

this context.

Or. en

Justification

This amendment is only a clarification. It replaces amendment 21.