EUROPEAN PARLIAMENT

2004 *2009*

Committee on Civil Liberties, Justice and Home Affairs

PROVISIONAL
2004/0287(COD)

8.11.2005

***I
DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council on the Visa Information System (VIS) and the exchange of data between Member States on short stay-visas
(COM(2004)0835 – C6-0004/2005 – 2004/0287(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Sarah Ludford

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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on the proposal for a regulation of the European Parliament and of the Council on the Visa Information System (VIS) and the exchange of data between Member States on short stay-visas
(COM(2004)0835 – C6-0004/2005 – 2004/0287(COD))

(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and the Council (COM(2004)0835)[1],

– having regard to Article 251(2) and Articles 62 point (2) (b) (ii) and 66 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0004/2005),

– having regard to Rule 51 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2005),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission	Amendments by Parliament
Amendment 1 Recital 1	
(1) Building upon the conclusions of the Council of 20 September 2001, and the conclusions of the European Council in Laeken on 14 and 15 December 2001, in Seville on 21 and 22 June 2002, in Thessaloniki on 19 and 20 June 2003 and in Brussels on 25 and 26 March 2004, the establishment of the Visa Information System (VIS) represents one of the key initiatives within the politics of the European Union aimed at supporting	***deleted***

[1] Not yet published in OJ.

stability and security.

Justification

There is no reason why a recital in a Regulation of the European Parliament and of the Council should refer to a series of European Council and Council conclusions which have no legal value.

Amendment 2
Recital 3

(3) It is now necessary to give the Commission the mandate to set up and maintain the VIS and to define the purpose, the functionalities and responsibilities for the VIS, and to establish the conditions and procedures for the exchange of visa data between Member States to facilitate the examination of visa applications and the related decisions***, taking into account the orientations for the development of the VIS adopted by the Council on 19 February 2004***.	(3) It is now necessary to give the Commission the mandate to set up and maintain the VIS and to define the purpose, the functionalities and responsibilities for the VIS, and to establish the conditions and procedures for the exchange of visa data between Member States to facilitate the examination of visa applications and the related decisions.

Justification

See justification for amendment to Recital 1.

Amendment 3
Recital 4

(4) The Visa Information System should ***improve*** the ***administration*** of the common visa policy, consular cooperation and consultation between central consular authorities by facilitating the exchange of data between Member States on applications and on the decisions relating thereto, ***in order to prevent threats to internal security of any of the Member States and*** 'visa shopping' and ***to facilitate*** the fight against fraud ***and checks at external border checkpoints and within***	(4) The Visa Information System should ***have the purpose of improving*** the ***management*** of the common visa policy, consular cooperation and consultation between central consular authorities by facilitating the exchange of data between Member States on applications and on the decisions relating thereto. ***In doing so it should contribute to facilitatingt and accelerating the visa application procedure, preventing*** 'visa shopping' and ***facilitating*** the fight against fraud. The VIS

the territory of the Member States. The VIS should ***also facilitate*** the identification ***and return*** of illegal immigrants and ***the application*** of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanism for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national.	should ***have the derived benefit of contributing to facilitating checks on visas at external border crossing points, assisting in*** the identification of illegal immigrants and ***in the determination of the Member State responsible for examining an asylum application pursuant to Article 9*** of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanism for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national ***and preventing threats to the internal security of any of the Member States.***

Justification

The VIS should be limited to the specific purpose of a coherent common visa policy and an explicit distinction should be made between primary purposes and derived benefits. The changes introduced in this recital are explained in the justifications for amendments to Article 1(2), Article 1(a)(new) and Article 1(b)(new).

Amendment 4
Recital 9

(9) To ensure ***exact*** verification and identification of visa applicants, it is necessary to process biometric data in the VIS.	(9) To ensure verification and identification of visa applicants, it is necessary to process biometric data in the VIS.

Justification

As mentioned by the European Data Protection Supervisor (EDPS) and by various studies on biometrics, biometric verification and identification is never absolute. For instance, an error rate of 0.5 to 1% is normal which means that checks at external borders will have a false rejection rate between 0.5 and 1 %. Since there are always errors it is overstated to assert that biometric data will offer exact identification and verification of visa applicants.

Amendment 5
Recital 9 a (new)

(9a) It is necessary to provide for appropriate fallback procedures as essential safeguards for the introduction of biometrics, since biometrics are neither accessible to all nor completely accurate.

Justification

In the case of errors or in the case of those people whose fingerprints cannot be used, special procedures need to be established. See also justification for amendments to Articles 6(1)(a)(new) and 6(1)(b)(new).

Amendment 6
Recital 10 a (new)

(10a) Access to VIS data by authorities responsible for internal security should be regulated in a separate third-pillar instrument so as to avoid unregulated access.

Justification

In order to prevent threats to the internal security of Member States, regulating access to the VIS data for authorities responsible for internal security could be necessary. Even if this access will be regulated by a separate instrument based on the Title VI of the EU Treaty, the rapporteur considers it necessary to include in the current proposal the basic parameters on the availability of VIS data for law enforcement purposes. See also justification for amendment to Article 1(c)(new).

Amendment 7
Recital 11

(11) The personal data stored in the VIS should be kept for no longer than is necessary for the purposes of the VIS. It is appropriate to keep the data for a ***period*** of five years, in order to enable data on previous applications to be taken into account for the assessment of visa applications, including the applicants' good faith and for the documentation of illegal	(11) The personal data stored in the VIS should be kept for no longer than is necessary for the purposes of the VIS. It is appropriate to keep the data for a ***maximum*** of five years, in order to enable data on previous applications to be taken into account for the assessment of visa applications, including the applicants' good faith and for the documentation of illegal

immigrants who may, at some stage, have applied for a visa. ***A shorter period would not be sufficient for those purposes.*** The data should be deleted after the period ***of five years***, unless there are grounds to delete it earlier.	immigrants who may, at some stage, have applied for a visa. ***Specific retention periods should be laid down, taking into account the various situations occurring in practice and the different types of visa which may be issued.*** The data should be deleted after the ***retention*** period, unless there are grounds to delete it earlier.

Justification

It should be made explicit that the proposal sets a maximum data retention period of five years.

The importance of establishing differentiated retention periods has been underlined in the Opinion delivered by the Article 29 Working Party (WP). The primary aim is to ensure the proportionality in keeping data for certain periods.

Amendment 8
Recital 12 a (new)

	(12a) The Commission should, in accordance with Article 211 of the Treaty, ensure that this Regulation is properly implemented by the Member States.

Justification

The important role played by the Commission in this regard should be made explicit not least in order to encourage the Commission to proceed against the Member States, should they not correctly apply this Regulation.

Amendment 9
Recital 16 a (new)

	(16a) The European Data Protection Supervisor and the national supervisory authorities should cooperate actively with each other.

Justification

As underlined by the EDPS in his opinion, the supervision activities of the national supervisory authorities and the EDPS should be coordinated in order to ensure a sufficient level of consistency and overall effectiveness.

Amendment 10
Recital 19

(19) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[1].	***deleted***

Justification

See justification for amendments to Article 39.

Amendment 11
Article 1, paragraph 2

2. The VIS shall improve the administration of the common visa policy, consular cooperation and consultation between central consular authorities by facilitating the exchange of data between Member States on applications and on the decisions thereto, in order:	***deleted***
(a) to prevent threats to internal security of any of the Member States;	
(b) to prevent the bypassing of the criteria for the determination of the Member State responsible for examining the application;	
(c) to facilitate the fight against fraud;	

[1] OJ L 184, 17.7.1999, p. 23.

(d) to facilitate checks at external border checkpoints and within the territory of the Member States;

(e) to assist in the identification and return of illegal immigrants;

(f) to facilitate the application of Regulation (EC) No 343/2003.

Justification

The second paragraph of Article 1 is deleted and its content included in the following new Articles "Purpose" and "Derived benefits". This is done to underline that it is crucial to be clear about the purposes to be achieved with the system. The purpose limitation principle is paramount both in the light of Article 8 of the ECHR and of the general data protection framework. As considered by both the EDPS and the Article 29 WP, only a clear-cut, narrow definition of purpose will allow a correct assessment of the proportionality and adequacy of the processing of personal data.

Amendment 12
Article 1 a (new)

Article 1 a

Purpose

The VIS shall have the purpose of improving the management of the common visa policy, consular cooperation and consultation between central consular authorities by facilitating the exchange of data between Member States on applications and the decisions relating thereto. In so doing, it shall contribute:

(a) to facilitating and accelerating the visa application procedure;

(b) to ensuring that the criteria for determining the Member State responsible for examining the application are properly applied;

(c) to facilitating the fight against fraud;

Justification

The new Article on 'purpose' takes on board the provisions of the previous second paragraph of Article 1 which are directly linked with the visa policy with the following changes:
- A distinction is made between primary purposes and derived benefits.
- Facilitation of the common visa policy should be the heart of the VIS. This is underlined by the first part of the new article. The facilitation and speeding-up of applications is added as a purpose since the vast majority of third country nationals issued Schengen visas are lawful travellers.

Amendment 13
Article 1 b (new)

Article 1 b

Derived benefits

The VIS shall have the derived benefit of contributing:

(a) to facilitating checks on visas at external border crossing points;

(b) to assisting in the identification of illegal immigrants;

(c) to assisting in the determination of the Member State responsible for examining an asylum application pursuant to Article 9 of Regulation (EC) No 343/2003;

(d) to preventing threats to the internal security of any of the Member States.

Justification

This new Article takes on board the provisions of the previous second paragraph of Article 1 which could not be considered as autonomous purposes but only as positive consequences of the VIS, with the following changes:

- The reference to checks "within the territory of the Member States" is deleted from Article 16 (checks on visas) since this case is covered by Article 17 (identification of illegal immigrants).
- The VIS is not to be used for facilitating the return of illegal immigrants (only their

identification) as this matter first needs to be decided upon in the return Directive which has only just been proposed.
- The VIS is not to be used for the examination of an asylum application, as this would be disproportionate.
- The order of the derived benefits is changed: the prevention of threats to internal security is placed at the end of the list as in the case of the Council conclusions of February 2004. The rapporteur is of the opinion that a good visa policy automatically contributes towards internal security.

Amendment 14
Article 1 c (new)

Article 1 c

Bridging clause

To prevent threats to the internal security of any of the Member States, the national authorities responsible for internal security shall have access to the VIS in a manner laid down in a separate instrument which respects at least the following principles:

(a) access shall be an exception granted on a case-by-case basis; access may not be routine;

(b) access may be requested in relation to an ongoing investigation of a serious offence only;

(c) the VIS may be consulted at a single national access point only;

(d) a list shall be published of the authorities responsible for the internal security of each Member State which may request access to the VIS;

(e) Chapter IV, V and Chapter VI of the Commission's proposal 'concerning the Visa Information System (VIS) and the exchange of data between Member States on short stay-visas' (COM(2004)835) shall be included mutatis mutandis in the third-pillar instrument;

(f) data may not under any circumstances be transmitted to third countries.

Justification

At the request of the Council (conclusions of 7 March 2005) the Commission services are currently drafting a separate third pillar instrument giving access to the VIS for security services. The rapporteur is of the opinion that such access would be better than unregulated under-the-counter-access if a series of conditions are met. In particular, such access can only be granted in very exceptional circumstances given that the VIS data is collected mainly to facilitate the visa policy.

The bridging clause is drafted on the understanding that at the time of the adoption of the VIS Regulation the data protection framework decision in the third pillar will have been adopted and that data protection experts will be properly involved in all stages of the third pillar internal security access instrument including the design of the technical specifications.

Amendment 15
Article 2, point 3

(3) 'visa authorities' means the authorities of each Member State which are responsible for examining applications and for decisions taken thereto or for decisions whether to annul, revoke or extend visas;	(3) 'visa authorities' means the authorities of each Member State which are responsible for examining applications and for decisions taken thereto or for decisions whether to annul, revoke or extend visas***, as referred to in Part II, point 4, of, and Annex VI to, the Common Consular Instructions and in Regulation (EC) No 415/2003***;

Justification

The Commission's proposal is based on a functional concept of authority (e.g. a border guard issuing a visa is at that moment not border authority but visa authority). The reasoning behind this concept is that, in the view of the Commission, it is not possible to say which authority in a Member State does what. Such a concept is problematic because it leaves a lot of room for interpretation to Member States (the police being immigration authority) and is impossible to monitor (is the policeman now accessing the VIS because he is identifying an illegal immigrant or because he is doing something else?). Therefore the rapporteur proposes a series of clear definitions of 'authorities'.

The definition of 'visa authorities' is taken from Community law.

Amendment 16
Article 2, point 3 a (new)

(3a) 'border control authorities' means the national services responsible for border control referred to in Article 15(2) of Regulation (EC) No .../2005 of the European Parliament and of the Council of ... [establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)];

Justification

See justification for amendment to Article 2(3).

The definition of 'border control authorities' is taken from Community law.

Amendment 17
Article 2, point 3 b (new)

(3b) 'asylum authorities' means the authorities of each Member State notified to the Commission pursuant to Article 22 of Regulation (EC) No 343/2003;

Justification

See justification for amendment to Article 2(3).

The definition of 'asylum authorities' is taken from Community law.

Amendment 18
Article 2, point 3 c (new)

(3c) 'immigration authorities' means the administrative authorities of each Member State responsible for issuing residence permits and checking the validity of any such permits.;

Justification

See justification for amendment to Article 2(3). The definition of 'immigration authorities' clearly identifies the authorities which should have access to the VIS database in order to identify illegal immigrants, excluding police or other authorities responsible for the internal security of Member States. The access of these last mentioned authorities will be regulated separately in a third pillar proposal.

Amendment 19
Article 2, point 5

(5) 'applicant' means ***a third country national*** who has lodged an application for a visa;	(5) 'applicant' means ***any person subject to the visa requirement pursuant to Regulation (EC) No 539/2001*** who has lodged an application for a visa;

Justification

By deleting the term 'third country national' from this definition it is possible to delete the definition of it. See below on Article 2(6).

Amendment 20
Article 2, point 5 a (new)

	(5a) 'status information' means the information to the effect that a visa has been requested, issued, refused, annulled, revoked or extended, or the information to the effect that the examination of an application has been refused;

Justification

As the notion of 'status information' is often used in the proposal, the rapporteur considers it necessary to define it. The definition is based on the information taken from Articles 6, 8, 9, 10, 11 and 12.

Amendment 21
Article 2, point 6

(6) 'third country national' means any person who is not a citizen of the European Union within the meaning of Article 17(1) of the EC Treaty;	***deleted***

Justification

The expression 'third country national' is only used twice in the text: First in recital 4 where it is part of a reference and in Article 2(5) where it is part of the definition of 'applicant'. With the modified definition of 'applicant' there is no longer any need for the definition of 'third country national'.

Amendment 22
Article 2, point 7

(7) 'group ***members***' means ***other*** applicants ***with whom the applicant is travelling together, including the spouse and the children accompanying the applicant***;	(7) 'group' means applicants ***who are obliged by law to enter and to leave the territory of the Member States together;***

Justification

Both the EDPS and the Article 29 WP stressed that the definition of 'group members' should be clarified and based on precise, objective criteria since the current wording might lead to persons with even fairly insignificant links with one another (colleagues, clients, etc.) being considered as 'group members'. The consequences are important as the application file for an applicant will be linked to the application files of the other group members (according to Article 5). The amendment has the aim of limiting the definition of 'group' to the situations where there is a legal obligation for applicants to enter and leave the territory of the Member States together, for example pursuant to part I. 2.1.4. of the Common Consular Instructions (CCI) ('group visa') or to an Approved Destination Status Agreement (see for example the agreement with China; OJ L 83, 20.3.2004, p.14-21). For the sake of clarity, the reference to family members of the applicant is deleted here but is introduced in Article 5(4).

Amendment 23
Article 2, point 11 a (new)

	(11a) 'processing' means processing as defined in Article 2(b) of Directive

95/46/EC;

Justification

This definition is taken from the SIS II proposals (COM(2005)236; proposed Article 3(2)). It is important to include it in the present text as well.

Amendment 24
Article 2, point 11 b (new)

	(11b)'threat to public health' means any disease with epidemic potential as defined by the International Health Regulations of the World Health Organisation and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the Member States.

Justification

This definition is taken from the compromise reached between Parliament and Council on the Schengen Borders Code (Cashman report; A6-0188/2005; Article 2(19)).

Amendment 25
Article 3, paragraph 1, point (d)

(d) links to other applications.	(d) links to other applications ***as referred to in Article 5(3) and (4).***

Justification

There are only two proposed possible linkages between applications. For reasons of clarity they are referred to here.

Amendment 26

Article 4, paragraph 3

3. Each Member State shall designate the competent authorities, the staff of which shall have access to enter, amend, delete or consult data in the VIS. Each Member State shall communicate to the Commission a list of these authorities.	3. Each Member State shall designate the competent authorities, the staff of which shall have access to enter, amend, delete or consult data in the VIS. Each Member State shall communicate to the Commission a list of these authorities ***and any changes thereto immediately***. ***That list shall specify for what purpose or derived benefits each authority may process data in the VIS.***
The Commission shall publish ***these lists*** in the Official Journal of the European Union.	***Within 30 days after the entry into force of this Regulation*** the Commission shall publish in the Official Journal of the European Union ***a list detailing the competent authorities designated in accordance with the first subparagraph***. ***Where there are any changes thereto, the Commission shall publish once in the same year, in the Official Journal of the European Union, an updated consolidated list***. ***It shall maintain a constantly updated electronic version of the list on its website.***

Justification

The publication of consolidated updated versions on a regular basis is an indispensable tool for supervision and control at European as well as at national and local level. To allow for better control the list should specify for what purpose the authority may process data in the VIS. This provision is taken from Article 101 of the Schengen Convention.

Amendment 27
Article 5, paragraph 2

2. When creating the application file, the visa authority shall check in the VIS whether a previous application of the individual applicant has been registered in the VIS by any of the Member States.	2. When creating the application file, the visa authority shall check in the VIS whether a previous application of the individual applicant has been registered in the VIS by any of the Member States ***pursuant to Article 13***.

Justification

While Article 5 describes the general procedure, Article 13 gives the details thereof. To avoid any misunderstanding this is made clear by the insertion of this reference.

Amendment 28
Article 5, paragraph 4

4. If the applicant is travelling in a group ***with other applicants***, the visa authority shall create an application file for each applicant and link the application files of ***the group members***.	4. If the applicant is travelling in a group ***or with his spouse and children***, the visa authority shall create an application file for each applicant and link the application files of ***those persons***.

Justification

To ensure consistency with the terminology as defined in Article 2(7).

Amendment 29
Article 6, point 4, point (b)

(b) current nationality ***and nationality at birth***;	(b) current nationality;

Justification

This information is of no relevance for the implementation of the common visa policy and may actually give rise to unlawful discrimination between applicants that are nationals of the same third country (opinion of the Article 29 WP, p.11).

Amendment 30
Article 6, point 4, point (f)

(f) details of the person issuing an invitation or liable to pay the costs of living during the stay, being,	***deleted***

(i) in the case of a natural person, surname, first name and address of the person;	
(ii) in the case of a company, the name of the company and surname and first name of the contact person in that company;	

Justification

As pointed out by the Article 29 WP (p.15 of their opinion) the use of "such categories of data may be relevant or necessary in case a precise enquiry is launched with regard to specific individuals on concrete violations of legal provisions. Their processing would be, however, excessive and disproportionate with regard to the routine implementation of the visa policy." It is proposed to include this data in Article 7 as one can assume that in general terms applications which are subject to consultation with other Member States are a higher risk than 'normal applications'. Should a problem arise and if no consultation with other Member States was necessary the data would still be locally available in the consulate since it has to be provided on the visa application form. Furthermore, the current CCI do not explicitly require an invitation in each case (see part III.2 of the CCI).

Amendment 31
Article 6, point 6

(6) fingerprints of ***the applicant, in accordance with the relevant provisions of the Common Consular Instructions.***	(6) fingerprints of ***applicants of at least 12 years of age and under 80***;

Justification

The rapporteur raises these questions in the present legal text, knowing that the Commission would like to regulate them in a separate legal instrument amending the CCI. However, as this proposal has not yet been adopted, these important issues have to be introduced here.

So far there is no appropriate fingerprint technology for children. Therefore, Eurodac only stores fingerprints of persons of at least 14 years old. Since the technology has improved the rapporteur proposes an age limit of 12 years. As regards the elderly, the rapporteur does not consider it appropriate to take fingerprints from persons of 80 years or more. These persons are no longer considered to be a risk. One should note that even under the US-VISIT program persons over the age of 79 are exempted from fingerprinting.

Amendment 32
Article 6, paragraph 1 a (new)

1a. Where an applicant's fingerprints cannot be used, an entry to that effect shall be made in the remarks section of the uniform format for visas provided for in Regulation (EC) No 1683/95 and in the VIS. In that case, the applicant's surname, surname at birth (previously used surname(s)), first names, sex and date, place and country of birth may be used as search criteria only. The dignity and the integrity of the person shall be fully respected.

Justification

According to various studies, up to 5% of the population are estimated not to be able to enrol (because they have no readable fingerprints or no fingerprints at all). Around 20 million visa applicants are foreseen for 2005, which means that up to 1 million persons will not be able to follow the normal enrolment process. Therefore, appropriate fallback procedures should be foreseen. According to the EDPS, these procedures should neither decrease the security level of the visa policy nor stigmatize the individual with unreadable fingerprints. The rapporteur considers that the surname, surname at birth (previously used surname(s)) and first names together with the sex and date, place and country of birth fulfil these requirements.

Amendment 33
Article 6, paragraph 1 b (new)

1b. Member States shall establish a procedure for cases where a person claims to have been falsely rejected. In such cases, the person's surname, surname at birth (previously used surname(s)), first names, sex and date, place and country of birth may be used as search criteria only. The dignity and the integrity of the person shall be fully respected.

Justification

As stressed by the EDPS and by various studies on biometrics, fallback procedures should be foreseen in case of error. See also the justifications for amendments to Article 6(1)(a)(new) and to Recital 9(a)(new).

Amendment 34
Article 7, point 7a (new)

	(7a) details of the person issuing an invitation or liable to pay the costs of living during the stay, being,
	(i) in the case of a natural person, surname, first name and address of the person;
	(ii) in the case of a company, the name of the company and surname and first name of the contact person in that company;

Justification

See justification for amendment to Article 6(4)(f).

Amendment 35
Article 9, point 2

(2) the authority that refused the examination of the application ***and whether this decision was taken on behalf of another Member State*;**	(2) the authority that refused the examination of the application;

Justification

According to the CCI, part II, 1.2 (p.15-17), representation shall apply solely to the issue of visas. That means that the representing Member State may not refuse on behalf of the represented Member State to examine the application. The competent Member State to take this decision is the represented Member State.

Amendment 36
Article 10, paragraph 1, point (b)

(b) the authority that refused the visa ***and whether this decision was taken on behalf of another Member State***;	(b) the authority that refused the visa;

Justification

According to the CCI, part II, 1.2 (p.15-17), representation shall apply solely to the issue of visas. That means that the representing Member State may not refuse a visa on behalf of the represented Member State. The competent Member State to take this decision is the represented Member State.

Amendment 37
Article 10, paragraph 2 a (new)

	2a. The grounds for refusal referred to in paragraph 2 shall be re-assessed for each new visa application and therefore shall not influence a new decision.

Justification

The grounds for visa refusal could have a limited validity in time and therefore should be reassessed.

Amendment 38
Article 11, paragraph 1, point (b)

(b) authority that annulled or revoked the visa ***and whether this decision was taken on behalf of another Member State***;	(b) authority that annulled or revoked the visa;

Justification

According to the CCI, part II, 1.2 (p.15-17), representation shall apply solely to the issue of visas. That means that the representing Member State may not annul or revoke a visa on behalf of the represented Member State. The competent Member State to take these decisions is the represented Member State.

Amendment 39
Article 12, paragraph 1, point (b)

(b) the authority that extended the visa ***and whether this decision was taken on behalf***	(b) the authority that extended the visa;

of another Member State;

Justification

According to the CCI, part II, 1.2 (p.15-17), representation shall apply solely to the issue of visas. That means that the representing Member State may not extend a visa on behalf of the represented Member State. The competent Member State to take this decision is the represented Member State.

Amendment 40
Article 13, paragraph 2, introduction

2. For the purposes referred to in paragraph 1, the competent visa authority shall be given access to search with ***one or several of the following data***:	2. For the purposes referred to in paragraph 1, the competent visa authority shall be given access to search with ***the number of the visa sticker of any previous visa issued.***

Justification

The rapporteur considers that the key questions that should be answered with regard to the use of the VIS for the stated purposes (Article 13, Article 16, Article 17 and Article 18) are the following: what is in each specific case the "key" to open the database and what data should the competent authorities then have access to? In answering these questions, the rapporteur tried in each particular case to reduce the number of keys and data to confine access only to those really necessary and proportionate.

In the case of Article 13, the rapporteur makes a distinction between the cases where the applicant can present the visa sticker of a previously issued visa and the cases where s/he cannot. For the first case, the number of the visa sticker has been assessed as the adequate and sufficient key to open the system and see whether or not the visa applicant is recorded in the VIS.

In case an applicant cannot present a visa sticker of a previously issued visa (Article 13(2)(a)(new)), the rapporteur considers that fingerprints, sex and date, place and country of birth are adequate and sufficient means in order to check whether or not a visa applicant is recorded in VIS. In the case of persons unable to enrol, the procedure foreseen in Article 6(1)(a)(new) applies. Use of all other data (surname, surname at birth (earlier surname(s), first names; type and number of the travel document, the authority which issued it and the date of issue and of expiry; the name of the person or company issuing an invitation or liable to pay the costs of living during the stay; photographs) would be neither necessary nor proportionate.

Amendment 41
Article 13, paragraph 2, point (a)

(a) the application number;	***deleted***

Justification

See justification for amendment to Article 13(2) and 13(2)(b)(new).

Amendment 42
Article 13, paragraph 2, point (b)

(b) the data referred to in Article 6(4)(a)	***deleted***

Justification

See justification for amendment to Article 13(2). The use of surname, surname at birth (earlier surname(s)) and first names is not only unnecessary but also could open the door for all sorts of "fishing expeditions" simply because a name is readily available (while visa number is not). The rest of the data foreseen in Article 6(4)(a)(sex and date, place and country of birth) should be used only in case the applicant cannot present the visa sticker of a previously issued visa (see Article 13(2)(a)(new)).

Amendment 43
Article 13, paragraph 2, point (c)

(c) the data on the travel document, referred to in Article 6(4)(c);	***deleted***

Justification

See justification for amendment to Article 13(2). The use of type and number of the travel document, the authority which issued it and the date of issue and of expiry is not a necessary means for opening the system as the number of the visa sticker is considered sufficient.

Amendment 44
Article 13, paragraph 2, point (d)

(d) the name of the person or company	***deleted***

referred to in Article 6(4)(f);

Justification

See justification for amendment to Article 13(2). The use of this data is very disproportionate to the purpose of seeing whether the person has previously applied for a visa and there is no direct link between them.

Amendment 45
Article 13, paragraph 2, point (e)

(e) photographs;	***deleted***

Justification

Both the EDPS in his opinion (p.12) and the study on biometrics commissioned by the LIBE Committee ("Biometrics at the Frontiers: Assessing the Impact on Society", IPTS, p.106-111) arrived at the conclusion that face recognition technology is not yet mature and therefore photographs cannot be used for identification (one-to-many) in a large scale database; they cannot provide for a reliable result. Therefore, photographs are systematically deleted as a search criterion for identification but will be maintained as a tool for verifying someone's identity (one-to-one).

Once the face recognition technology is mature the Commission is invited to present a proposal amending this Regulation.

Amendment 46
Article 13, paragraph 2, point (f)

(f) fingerprints;	***deleted***

Justification

See justification for amendment to Article 13(2). There is no justification for using fingerprints at this stage since the number of the visa sticker is sufficient. The fingerprints will be used as search criteria only in case the applicant cannot present the visa sticker of a previously issued visa (Article 13(2)(a)(new)).

Amendment 47
Article 13, paragraph 2, point (g)

(g) the number of the visa sticker of any	***deleted***

previous visa issued.

Justification

See justification for amendment to Article 13(2). This text has been introduced in the body itself of Article 13(2).

Amendment 48
Article 13, paragraph 2 a (new)

2a. Where an applicant is unable to present the visa sticker of a previously issued visa, the competent visa authority shall, for the purposes referred to in paragraph 1, have the right to search the VIS with the following data:

(a) the applicant's fingerprints, sex and date, place and country of birth;

(b) the applicant's surname, surname at birth (previously used surname(s)) and first names, together with his or her sex and date, place and country of birth pursuant to Article 6(1a).

Justification

See justification for amendment to Article 13(2).

Amendment 49
Article 13, paragraph 2 b (new)

2b. In the course of the examination of a visa application, the competent visa authority shall have the right to search the VIS with the application number.

Justification

Where an applicant has to come several times to the consulate (for example to bring further

documents requested) it should be possible to access the VIS with the application number.

Amendment 50
Article 13, paragraph 2 c (new)

2c. Where an applicant claims to have been falsely rejected, the procedure referred to in Article 6(1b) shall apply.

.

Justification

See justification for amendment to Article 6(1)(b)(new).

Amendment 51
Article 13, paragraph 3

3. If the search with ***one or several of*** the data listed in ***paragraph 2*** indicates that data on the applicant is recorded in the VIS, the visa authority shall be given access to the application file and the linked application file(s), solely for the purposes referred to in paragraph 1.	3. If the search with the data listed in ***paragraph 2, 2a, 2b or 2c*** indicates that data on the applicant is recorded in the VIS, the visa authority shall be given access to the application file and the linked application file(s) ***pursuant to Article 5(3) and (4),*** solely for the purposes referred to in paragraph 1.

Justification

For the first part: The changes are necessary to ensure consistency with the other amendments to Article 13.

For the second part: See justification for amendment to Article 3(1)(d).

Amendment 52
Article 15, paragraph 1a (new)

1a. Only data not allowing applicants to be identified may be used for reporting and statistics.

Justification

It should be made explicit that the nature of the data used for reporting and statistics does not allow for the identification of individual applicants.

Amendment 53
Article 15, point 2

(2) the competent ***authorities***;	(2) the competent ***authority with which the visa application was lodged and its location***;

Justification

The term 'competent authorities' is too vague for the purpose of reporting and statistics. It should be made explicit that it is the competent autority where the visa application is lodged (e.g. which consulate?) and the physical place which are of interest for the purpose of reporting and statistics.

Amendment 54
Article 15, point 9

(9) the competent authority and the date of the ***decision refusing any previous visa application***.	(9) the competent authority***, including its location, which refused the visa application*** and the date of the ***refusal***.

Justification

See justification for amendment to Article 15(2). The term 'previous' has been deleted because it is not necessary.

Amendment 55
Article 16, title

Use of data for checks on visas	Use of data for checks on visas ***at external border crossing points***

Justification

The rapporteur considers that Article 16 should only apply where the VIS data could be used for checks on visas at external border crossing points and should exclude the possibility of checks within the territory of the Member States. The latter activity will be covered by Article 17. This is done in order to clearly identify which authorities will have access to the VIS for which purpose. See also the justification for amendment to Article 16(1).

Amendment 56
Article 16, paragraph 1

1. The competent authorities for carrying out checks at external borders ***and within the territory of the Member State,*** shall have access to ***search with the following data,*** for the sole purpose of verifying the identity of the person and/or the authenticity of the visa:	1. The competent ***border control*** authorities ***responsible*** for carrying out checks ***on visas*** at external borders shall have access to ***the facial image and fingerprint data held on the storage medium provided for in Regulation 2005/XX/EC [amending Regulation (EC) 1683/95 laying down a uniform format for visas]*** for the sole purpose of verifying the identity of the person and/or the authenticity of the visa.
(a) the data referred to in Article 6(4)(a);	
(b) data on the travel document, referred to in Article 6(4)(c);	
(c) photographs,;	
(d) fingerprints;	
(e) the number of the visa sticker.	

Justification

In the specific case of border control the task of the border guard is to check whether a traveller subject to the visa requirement has a visa and whether this visa is authentic (i.e. was issued to the person correctly). This process is a verification (see definition in Article 2(10)): is the person in front of the border guard the one to whom this visa was issued? For this purpose access to the central database is not necessary. It is sufficient if data necessary for verification is stored decentrally on a microchip (either stuck into the visa or on a separate smartcard). The application of the proportionality principle requires opting for the less intrusive option. This solution is also proposed by the Article 29 WP in their opinion on VIS (p. 16) and by the EDPS in his opinion (p. 11). The same concept of storing data for verification preferably decentrally is advocated by the Council of Europe ("Progress Report on the Application of the Principles of Convention 108 to the Collection and processing of Biometric Data"; p. 26).

This solution would have the additional advantages of limiting the number of users and access points of the VIS and thereby probably reducing costs, staff training requirements and the risk of abuse.

This solution was initially proposed by the Commission (COM(2003)558). The procedure is, however, at the moment blocked because technical problems (in particular the collision of several visas in one passport) were apparently encountered. It is also argued that the decentralised solution would bring additional costs (for the chip) and might require more time for the border check than the retrieval of the data from a central database which is needed in any case as a backup. On the other side, it should be possible, with the necessary will, to overcome the technical problems. The cost of a chip is minimal in relation to the costs for the equipment of consulates, border crossing points and all the other authorities. In addition, there will be savings since not all border control booths need to be equipped with an access to the central VIS.

In addition, the reference to 'checks within the territory of the Member State' is deleted. This will be the responsibility of the immigration authorities

Amendment 57
Article 16, paragraph 2

2. ***If the search with one or several of the data the listed in paragraph 1 indicates that data on the applicant is recorded in the VIS, the competent authority shall be given access to consult the following data of the application file as well as of linked application file(s) of group members, for the sole purpose referred to in paragraph 1:***	2. ***The competent border control authorities shall use the applicant's fingerprints in case of doubt to establish a more reliable link between the holder of the visa and the visa.***
(a) the status information and the data taken from the application form, referred to in Article 6(2), (4) and Article (7);	
(b) photographs,	
(c) fingerprints;	
(d) the data entered in respect of any visa previously issued, annulled, revoked or extended.	

Justification

It is preferable to lay down that the biometric data should at the moment of the border check not be used in every single case (which would take too much time) but only in case of doubt.

Amendment 58
Article 16, paragraph 2 a (new)

2a. Member States shall establish one point for accessing the VIS at each authorised border crossing point as notified by the Member States to the Commission pursuant to Article 34(1)(b) of Regulation [...borders code] for the sole purpose of verifying the identity of the person and/or the authenticity of the visa where the storage medium provided for in Regulation 2005/XX/EC [amending Regulation (EC) 1683/95 laying down a uniform format for visas] cannot be used. A limited number of specially trained border guards shall have the right to search the VIS with the number of the visa sticker.

Justification

It is necessary to have at each border crossing point a single access to the VIS in case a chip or smartcard does not work. In this case it is sufficient to use the visa sticker number as a key to access the database.

Amendment 59
Article 16, paragraph 2 b (new)

2b. Where the search referred to in paragraph 2a reveals that data on the applicant is recorded in the VIS, the competent border control authorities shall have the right to consult the data referred to in Article 6(5) and 6(6) for the purpose referred to in paragraph 2a only.

Justification

In the second step the border authority should be able to access the same data as is stored on the storage medium.

Amendment 60
Article 17, title

Use of data for identification ***and return*** of illegal immigrants	Use of data for identification of illegal immigrants

Justification

The objective of the VIS should not include the facilitation of return of illegal immigrants (but only their identification). This issue has to be solved in the return Directive.

Amendment 61
Article 17, paragraph 1

1. The competent immigration authorities shall have access to search with the following data, solely for the purposes of identification ***and return*** of illegal immigrants:	1. The competent immigration authorities shall have access to search with the following data, solely for the purposes of identification of illegal immigrants:
(a) ***the data referred to in Article 6(4)(a);***	(a) ***where the person carries a visa, the visa sticker number;***
(b) ***photographs;***	(b) ***where the person does not carry a visa:***
(c) fingerprints.	***(i) his or her fingerprints, sex and date, place and country of birth;***
	(ii) his or her surname, surname at birth (previously used surname(s)) and first names, together with his or her sex and date, place and country of birth pursuant to Article 6(1a).
	Where the applicant claims to have been falsely rejected, the procedure referred to in Article 6(1b) shall apply.

Justification

The objective of the VIS should not include the facilitation of return of illegal immigrants (but only their identification).

As for the other amendments introduced in this Article, the rapporteur considers that one should not exclude the possibility that the person whom the competent authorities want to

identify might carry a travel document with a visa inside, and therefore a clear distinction should be made between this situation and the cases where the person does not carry a travel document with a visa inside.

In the first case, the number of the visa sticker has been assessed as the adequate and sufficient key to open the VIS. In case a person does not carry a travel document the rapporteur considers that fingerprints, sex and date, place and country of birth are sufficient means to check whether or not the person is recorded in the VIS (and for the persons unable to enrol, the procedure foreseen in Article 6(1)(a)(new) applies. The rest of the data referred to in Article 6(4)(a) is not necessary in any of these two cases. Photographs are systematically deleted as a search criterion for identification but will be maintained as a tool for verifying someone's identity (one-to-one) (see also amendment to Article (13)(2)(e)).

For the new procedure introduced in point (iii) see justification for amendment to Article 6(1)(b)(new).

Amendment 62
Article 17, paragraph 2, introduction

2. If the search with ***one or several of*** the data listed in paragraph 1 indicates that data on the applicant is recorded in the VIS, the competent authority shall be given access to consult the following data of the application file and the linked application file(s), solely for the ***purposes*** referred to in paragraph 1:	2. If the search with the data listed in paragraph 1 indicates that data on the applicant is recorded in the VIS, the competent ***immigration*** authority shall be given access to consult the following data of the application file and the linked application file(s) ***pursuant to Article 5(3) and (4)***, solely for the ***purpose*** referred to in paragraph 1:

Justification

To ensure consistency with the amendments to Article 17(1) and to Article 3(1)(d). See their respective justifications.

Amendment 63
Article 17, paragraph 2, point (b)

(b) the data taken from the application form, referred to in Article 6(4) ***and Article 7***;	(b) the data taken from the application form, referred to in Article 6(4);

Justification

There is no need to have access to data referred to in Article 7 since the status information, the data referred to in Article 6(4) and the photographs are adequate and sufficient means for identifying a person.

Amendment 64
Article 17, paragraph 2, point (d)

(d) the data entered in respect of any visa previously issued, refused, annulled, revoked or extended.	***deleted***

Justification

The derived benefit of the VIS as defined in Article 1(b)(new), should not include facilitation of return. The data of this subparagraph would only be needed in such a case. This issue has to be solved in the return Directive.

Amendment 65
Article 18, paragraph 1, point (a)

(a) ***the data referred to in Article 6(4)(a);***	(a) ***the applicant's fingerprints, sex and date, place and country of birth;***

Justification

See justification for amendment to Article 13(2).

In the case of the Article 18, the rapporteur considers that the 'key' to open the database should be the fingerprints, sex and date, place and country of birth. The use of the rest of the data referred to in Article 6(4)(a) is not only unnecessary but also in certain cases could open the door for all sorts of 'fishing expeditions' simply because a name for instance is readily available (while fingerprints are not). The rapporteur considers that only a very limited 'hit-no-hit' system (like in the case of the Eurodac system for the determination of the Member State responsible for an asylum application) could be an adequate and proportionate one.

Amendment 66
Article 18, paragraph 1, point (b)

(b) ***photographs;***	(b) ***the applicant's surname, surname at birth (previously used surname(s)) and first names, together with his or her sex and date, place and country of birth, pursuant to Article 6(1a);***

Justification

Photographs are systematically deleted as a search criterion for identification (see also justification for amendment to Article 13(2)(e)). In the case of Article 18, they are also deleted as a tool for verifying someone's identity (see justification for amendment to Article 18(2)(e)).

In the case of persons unable to enrol, the procedure foreseen in Article 6(1)(a)(new) applies. See also justification for amendment to Article 18(1)(a).

Amendment 67
Article 18, paragraph 1, point (c)

(c) fingerprints	***Where the applicant claims to have been falsely rejected, the procedure referred to in Article 6(1b) shall apply.***

Justification

The reference to fingerprints is included in Article 18(1)(a).

For the new procedure see justification for amendment to Article 6(1)(b)(new).

Amendment 68
Article 18, paragraph 2

2. If the search with ***one or several of*** the data listed in paragraph 1 indicates that a visa issued with an expiry date of no more than six months before the date of the asylum application, and/or a visa extended to an expiry date of no more than six months before the date of the asylum application, is recorded in the VIS, the competent authority shall be given access to consult the following data on such visa, for the sole purpose referred to in	2. If the search with the data listed in paragraph 1 indicates that a visa issued with an expiry date of no more than six months before the date of the asylum application, and/or a visa extended to an expiry date of no more than six months before the date of the asylum application, is recorded in the VIS, the competent ***asylum*** authority shall be given access to consult the following data on such visa, for the sole purpose referred to in paragraph 1:

paragraph 1:

Justification

To ensure consistency with the amendments to Article 18(1).

Amendment 69
Article 18, paragraph 2, point (a)

(a) the ***authority that*** issued or extended the visa;	(a) the ***Member State which*** issued or extended the visa ***and whether the decision to issue the visa was taken on behalf of another Member State***;

Justification

It should be made explicit that it is the Member State which issued or extended the visa which is of interest for the purpose of Article 18, and not simply the authority. At the same time, it is essential here to know if the visa was issued on behalf of another Member State (which will become in this case responsible for examining the asylum applications). These amendments are in conformity with the CCI, part II, 1.2 (p.17) and also with the Article 9(2) of the Dublin II Regulation.

Amendment 70
Article 18, paragraph 2, point (e)

(e) photographs	***deleted***

Justification

Photographs are not necessary for the implementation of the Dublin II Regulation, as is the case of the data in letters (a), (b), (c) and (d). See also justification for amendment to Article 18(1)(b).

Amendment 71
Article 19

Article 19	***deleted***
Use of data for examining the application	

for asylum

1. The competent asylum authorities shall have access in accordance with Regulation (EC) No 343/2003 to search with the following data, for the sole purpose of examining an application for asylum:

(a) the data referred to in Article 6(4)(a);

(b) photographs;

(c) fingerprints.

2. If the search with one or several of the data listed in paragraph 1 indicates that data on the applicant is recorded in the VIS, the competent authority shall have access to consult the following data of the application file and the linked application file(s), for the sole purpose referred to in paragraph 1:

(a) the status information and the authority to which the application has been lodged;

(b) the data taken from the application form, referred to in Article 6(4) and Article 7;

(c) photographs;

(d) the data entered in respect of any visa previously issued, refused, annulled, revoked or extended, or in respect of the refusal to examine the application.

Justification

Visa data can in certain cases indeed be useful in order to check the credibility of an applicant. Nevertheless this functionality should be deleted for two main reasons: 1) An asylum application needs to be examined with a view to ascertain whether the person is persecuted in a particular country. It does sometimes happen that asylum seekers provide false or misleading information at the time of lodging a visa application if this is the only means available for them to leave their countries of origin and travel overseas for the purpose of claiming asylum. UNHCR considers that 'untrue statements by themselves are not a reason for refusal of refugee status and it is the examiner's responsibility to evaluate such statements in the light of all circumstances of the case' (see UNHCR handbook on procedures and criteria for determining refugee status, paragraph 199). Access to the VIS can lead to the asylum authorities to put too much emphasis on this data while examining an asylum

application. There is a danger for this to become an overwhelming criterion for rejecting asylum seekers. For those reasons, the UNCHR itself recommended in a letter sent on 8 November 2005 limiting the use of VIS data to the determination of the Member State responsible for examining an asylum application (Article 18).

2) There is no need to access the VIS because Member States already have a procedure enabling the electronic exchange of visa data of asylum seekers via DubliNET (Regulation 343/2003 (Dublin II); Article 21(1)(b) and 21(2)(e); 21(3); Regulation 1560/2003; Article 18). Moreover, access to the VIS for the purpose referred to in Article 18 would allow the identification of the Member State responsible for examining an asylum application. This would enable the competent authorities to refer to that Member State for the purpose of obtaining any information required. There is no convincing argument why this should not be sufficient. There is no specific need for urgency to obtain this information in the course of examining an application for asylum nor is the DubliNET procedure too cumbersome. Access to the VIS for this purpose would consequently not be proportionate.

Amendment 72
Article 19 a (new)

Article 19 a

Misuse of data

Any use of data which does not comply with Articles 13 to 18 shall be considered a misuse under the law of the Member States.

Justification

According to recital 14 the data protection Directive 95/46 applies. Article 13 of that Directive provides for the possibility for Member States to take legislative measures to restrict the scope of obligations and rights provided for by them, when such a restriction constitutes a necessary measure to safeguard other important interests (e.g. national security, defence, public security). This should be excluded in the present case.

Amendment 73
Article 20, paragraph 1, subparagraph 1

1. Each application file shall be stored in the VIS for five years, without prejudice to the deletion referred to in Article 21 and Article 22 ***and*** to the keeping of records referred to in Article 28.	1. Each application file shall be stored in the VIS for ***a maximum of*** five years, without prejudice to the deletion referred to in Article 21 and Article 22***,*** to the keeping of records referred to in Article 28 ***and the specific retention periods laid down in***

paragraphs 1a and 1b.

Justification

Five years for keeping the data should be a maximum.

The importance of establishing more selective retention periods has been underlined in the Opinion delivered by the Article 29 WP. This is necessary in order to take into account the different situations which may occur in practice and the different types of visa which may be issued. The primary aim is to ensure the proportionality in keeping data for certain periods.

Amendment 74
Article 20, paragraph 1 a (new)

1a. The following specific retention periods shall apply:

(a) where a visa has been issued, one year;

(b) where a visa has been refused on the grounds referred to in Article 10(2)(a), (b) or (d), five years;

(c) where a visa has been refused on the ground referred to in Article 10(2)(c), three years;

(d) for a transit visa or an airport transit visa, six months.

Justification

The one and five year periods are the current acquis - they correspond to the CCI (part VII. 2).

The retention period for data on a visa refusal based on a SIS alert should be made consistent with the maximum retention period for the SIS alert in the SIS itself (3 years for non-admissible foreigners). Keeping this SIS data for a longer period in the VIS would circumvent the provisions for data reexamination and deletion of the SIS (see Opinion of the Article 29 WP, p.19).

For transit visa, it appears disproportionate to keep data for longer than six months.

Amendment 75

Article 20, paragraph 1 b (new)

	1b. Frequent applicants may request that their data be stored for five years.

Justification

As underlined by the Article 29 WP, a specific criterion may be retained for frequent travellers to allow the application process to be fast-tracked.

Amendment 76
Article 20, paragraph 2

Upon expiry of the ***period*** referred to in ***paragraph 1***, the VIS shall automatically delete the application file and the link(s) to this file.	Upon expiry of the ***periods*** referred to in ***paragraphs 1, 1a and 1b*****,** the VIS shall automatically delete the application file and the link(s) to this file ***as referred to in Article 5(3) and (4).***

Justification

For consistency with the amendments to Article 20(1) and to Article 3(1)(d).

Amendment 77
Article 21, paragraph 2

2. If a Member State has evidence to suggest that data processed in the VIS is inaccurate or that data was processed in the VIS contrary to this Regulation, it shall ***advise*** the Member State responsible immediately. ***Such message may be transmitted by the infrastructure of the VIS.***	2. If a Member State has evidence to suggest that data processed in the VIS is inaccurate or that data was processed in the VIS contrary to this Regulation, it shall***, through the VIS infrastructure, inform*** the Member State responsible immediately ***and request that the data be corrected***.

Justification

This will encourage Member States to play a more active role in policing the system. At the same time, if there is an obligation to use the VIS infrastructure, instead of calling, sending e-mails etc, then at least one can be sure that the information is not lost.

Amendment 78
Article 22, paragraph 1

1. ***Application files and the links relating to*** an applicant ***who*** has acquired the nationality of any Member State ***before expiry of the period referred to in Article 20(1)*** shall be deleted from the VIS immediately as the Member State responsible becomes aware that the applicant has acquired such nationality.	1. ***Where, before expiry of the periods referred to in Article 20(1), (1a) and (1b),*** an applicant has acquired the nationality of any Member State, ***or his or her status has been otherwise regularised so that it is no longer necessary for data relating to him or her to be stored on the VIS, application files and the links referred to in Article 5(3) and (4) relating to him or her*** shall be deleted from the VIS immediately as the Member State responsible becomes aware that the applicant has acquired such nationality ***or that his or her status has been otherwise regularised***.

Justification

As stressed by the EDPS (p.11) and by the Article 29 WP, deletion of data must be ensured when the data are no longer accurate, and this could be the case not only of persons who obtain the nationality of a Member State but also of those persons who acquire other regularised status that does not require their inclusion in the system anymore.

The other amendments are made for ensuring consistency with the amendments to Article 20 (1) and to Article 3(1)(d).

Amendment 79
Article 22, paragraph 2

2. Each Member State shall ***advise*** the Member State responsible immediately, if an applicant has acquired its nationality.	2. Each Member State shall***, through the VIS infrastructure, inform*** the Member State responsible immediately, if an applicant has acquired its nationality ***or if his or her status has been otherwise regularised so that it is no longer necessary for data relating to him or her to be stored on the VIS***.

Justification

See justifications for amendments to Article 22(1) and to Article 21(2).

Amendment 80
Article 23, paragraph 1

1. The Commission shall be responsible for establishing and operating the Central Visa Information System and the communication infrastructure between the Central Visa Information System and the National Interfaces.	1. The Commission shall be responsible for establishing and operating***, at all times,*** the Central Visa Information System and the communication infrastructure between the Central Visa Information System and the National Interfaces. ***In particular, it shall be responsible for the maintenance work and technical developments necessary to ensure that the system runs smoothly.***

Justification

It seems necessary to specify in more detail what exactly the operational management means.

Amendment 81
Article 23, paragraph 2

2. The data shall be processed by the VIS on behalf of the Member States.	***deleted***

Justification

The wording of this paragraph is very unclear and should therefore be deleted. The basic concept is included in the refined role of the Commission. The deletion of this paragraph is also recommended by the EDPS in his opinion on the VIS (p.13).

Amendment 82
Article 25, paragraph 1, point (ba) (new)

	(ba) only duly authorised staff have access to data processed in the VIS for the performance of the tasks in accordance with this Regulation;

Justification

It is unjustifiable to have such a provision only for the Commission and not also for the Member States.

Amendment 83
Article 25, paragraph 2, point (ba) (new)

(ba) ensure that this Regulation is properly implemented by the Member States.

Justification

The important role played by the Commission in this regard should be made explicit not least in order to encourage the Commission to proceed against the Member States, should they not correctly apply this Regulation.

Amendment 84
Article 25, paragraph 2, point (bb) (new)

(bb) ensure that at all times the best available technology is used for the VIS.

Justification

Pursuant to Decision 2004/512/EC the Commission is responsible for the development of the system. Once established, however, the system needs to be continuously updated. The amendment seeks to clarify that this is a responsibility of the Commission. If, for example, a new element of the selected biometric system like a more efficient algorithm for the Automatic Fingerprint Identification System with lower error rates becomes available, this technology should be implemented.

Amendment 85
Article 26, paragraph 2, point (aa) (new)

(aa) physically protect data including by

making contingency plans for the protection of critical infrastructure;

Justification

This has been considered an important safeguard for handling the potential risks related to the infrastructure of the system and ensuring an optimal security level for the VIS.

Amendment 86
Article 26, paragraph 2, point (c)

(c) ensure that it is possible to check and establish what data has been processed in the VIS, when ***and*** by whom (control of data recording);	(c) ensure that it is possible to check and establish what data has been processed in the VIS, when***,*** by whom ***and for what purpose*** (control of data recording);

.

Justification

It is important to ensure that the purpose of data processing can also be checked.

Amendment 87
Article 26, paragraph 2, point (ca) (new)

(ca) ensure that the VIS may be accessed with individual and unique user identities and confidential passwords only;

Justification

These measures are recommended by both the Article 29 WP and the EDPS and are intended to increase the security of the system.

Amendment 88
Article 26, paragraph 2, point (cb) (new)

(cb) ensure that all the authorities with a right of access to the VIS develop precise

	user profiles and maintain an up-to-date list of user identities, which shall be made available to the national supervisory authorities referred to in Article 34;

Justification

Both the EDPS (p.14 of his Opinion) and the Article 29 WP (p.20 of their Opinion) stressed the necessity of creating precise user profiles and a complete up-to-date list of user identities, that should be kept at the disposal of the national supervisory authorities for checks.

Amendment 89
Article 26, paragraph 2, point (g)

(g) prevent the unauthorised reading, copying, modification or deletion of data during the transmission of data to or from the VIS (control of transport)**.**	(g) prevent the unauthorised reading, copying, modification or deletion of data during the transmission of data to or from the VIS***, in particular by appropriate encryption techniques*** (control of transport)***;***

Justification

The data intended for transmission under the VIS system should be encrypted so that they cannot be accessible to unauthorised third parties. This has been pointed out by the Article 29 WP in their opinions (Opinion no. 7/2004 and the opinion adopted on 23 June 2005).

Amendment 90
Article 26, paragraph 2, point (ga) (new)

	(ga) monitor the effectiveness of the security measures referred to in this paragraph (self-auditing) in accordance with Article 28a.

Justification

The necessity of complementing the security measures with provisions on systematic self-auditing of security measures is stressed by the EDPS in his Opinion (p.14). It can also be

noted that the SIS II proposal contains the same provision.

Amendment 91
Article 26, paragraph 3 a (new)

	3a. The measures referred to in paragraphs 2 and 3 shall be in conformity with the IT data-security standard referred to in Article 36(2)(b).

Justification

As pointed out by the EDPS, sufficient safeguards should be put in place against potential risks to the infrastructure of the system and to the persons involved. Such safeguards should be constantly updated in order to be in line with recent technological developments. Therefore, the rapporteur considers that besides the improvements made in Article 26(2), a clear International/European standard dealing with IT data security should be identified via the comitology procedure. This will have the advantage of the reference being flexible, e.g. each time the standard is updated (because of new developments) the standard of data security ensured by Article 26 would also rise.

Amendment 92
Article 28, paragraph 2

2. Such records may be used only for the data-protection monitoring of the admissibility of data processing ***as well as*** to ensure data security. The records shall be protected by appropriate measures against unauthorised access and deleted *after a period of* one year after the retention ***period*** referred to in ***Article 20(1) has*** *been* expired, if they are not required for monitoring procedures which have already begun.	2. Such records may be used only for the data-protection monitoring of the admissibility of data processing***,*** to ensure data security ***and to carry out self-auditing in accordance with Article 28a***. The records shall be protected by appropriate measures against unauthorised access and deleted one year after the retention ***periods*** referred to in ***Article 20(1), (1a) and (1b) have*** expired, if they are not required for monitoring procedures which have already begun.

Justification

These records shall not only be stored for monitoring data protection and ensuring data security but also in order to efficiently conduct regular self-auditing of the VIS. This has been pointed out also by the EDPS on p.14 of his Opinion on the VIS

The other changes are necessary to ensure consistency with the amendments to Article 20(1).

Amendment 93
Article 28 a (new)

Article 28a

Self-auditing

Each authority with a right of access to the VIS shall have an internal monitoring service responsible for ensuring compliance with this Regulation and reporting directly to its senior management. Each authority shall send a regular report to the national supervisory authorities referred to in Article 34 and shall cooperate with them.

Justification

As pointed out by the EDPS in his Opinion on the VIS (p.14), the self-auditing reports are very important not least because they will contribute to the effective execution of the tasks of the national supervisory authorities that will be able to identify problems and to focus on them during their own auditing procedure. In fact, the same concept is being applied here as in the case of financial control.

Amendment 94
Article 29, title

Penalties	***Criminal offence and*** penalties

Justification

The judgement in Case C-176/03 allows the Community Legislature to take measures relating to the criminal law of the Member States in order to ensure that the rules which it lays down are fully effective. This is of particular importance in the present case.

Amendment 95
Article 29

The Member States shall lay down the	The Member States shall lay down the

rules on penalties applicable to infringements of the provisions of this Regulation relating to data protection and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date of the notification referred to in Article 37(1) at the latest and shall notify it without delay of any subsequent amendment affecting them.	rules on penalties applicable to infringements of the provisions of this Regulation relating to data ***security and data*** protection and shall take all measures necessary to ensure that they are implemented. ***Serious infringements shall constitute a criminal offence.*** The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date of the notification referred to in Article 37(1) at the latest and shall notify it without delay of any subsequent amendment affecting them.

Justification

As explained in the Annex to the COM(2004)835 proposal, p. 37, Article 29 creates the obligation on each Member State to ensure the proper processing and use of data through appropriate penalties, as an essential complement not only to the data protection arrangements but also to the security arrangements. This should be made explicit in Article 29 itself. See also the justification for the amendment to Article 29, title.

Amendment 96
Article 30, paragraph 1, introduction

1. Applicants and the persons referred to in ***Article 6(4)(f)*** shall be informed of the following by the Member State responsible:	1. Applicants and the persons referred to in ***Article 7(7a)*** shall be informed of the following by the Member State responsible:

Justification

This amendment is necessary to ensure consistency with the amendment to Article 6(4)(f).

Amendment 97
Article 30, paragraph 1, point (a)

(a) the identity of the controller referred to in Article 23(3) ***and of his representative***, ***if any***;	(a) the identity of the controller referred to in Article 23(3), ***including his contact details***;

Justification

There is no need to include the identity of the representative of the controller, as the controller is always installed on the territory of the European Union (EDPS opinion on the VIS, p.14). However, in order to ensure the effectiveness of data subjects' rights, it is necessary that the applicant is informed not only of the identity of the controller but also of his contact details.

Amendment 98
Article 30, paragraph 1, point (ca) (new)

	(ca) the data retention period;

Justification

As pointed out by both the EDPS and the Article 29 WP, the information about the data retention period should be considered a legitimate right of data subjects in order to allow them to adjust their behaviour accordingly.

Amendment 99
Article 30, paragraph 1, point (e)

(e) the existence of the right of access to, and the right to ***rectify, the data concerning that person***.	(e) the existence of the right of access to ***data relating to them***, and the right to ***request that inaccurate data relating to them be corrected or that unlawfully processed data relating to them be deleted***, ***including the procedures for exercising those rights and the responsibilities and contact details of the national supervisory authorities referred to in Article 34***.

Justification

The amendments in the firts part of the paragraph are necessary for the sake of accuracy and also for consistency with Article 31(2).

Data subjects should also be informed of the possibility to apply for advice or assistance to the relevant supervisory authorities. This has been recommended by the EDPS.

Amendment 100
Article 30, paragraph 2

2. The information referred to in paragraph 1 shall be provided to the applicant when the data from the application form, the photograph and the fingerprint data as referred to in Article 6(4), (5), (6) and Article 7 are taken.	2. The information referred to in paragraph 1 shall be provided to the applicant ***by the authority referred to in Article 23(3)*** when the data from the application form, the photograph and the fingerprint data as referred to in Article 6(4), (5), (6) and Article 7 are taken.

Justification

As recommended by the Article 29 WP, this provision should specify more clearly that it is the data controller that should provide to the applicant the information set out in Article 30 at the time of data collection.

Amendment 101
Article 30, paragraph 3

3. The information referred to in paragraph 1 shall be provided to the persons referred to in ***Article 6(4)(f)*** in the forms to be signed by those persons providing proof of invitation, sponsorship and accommodation.	3. The information referred to in paragraph 1 shall be provided to the persons referred to in ***Article 7(7a)*** in the forms to be signed by those persons providing proof of invitation, sponsorship and accommodation.

Justification

This amendment is necessary to ensure consistency with the amendment to Article 6(4)(f).

Amendment 102
Article 31, paragraph 1

1. Without prejudice to the obligation to provide other information in accordance with Article 12(a) of Directive 95/46/EC, any person shall have the right to obtain communication of the data relating to him recorded in the VIS and of the Member State which transmitted it to the VIS. ***Such access to data may be granted only by a***	1. Without prejudice to the obligation to provide other information in accordance with Article 12(a) of Directive 95/46/EC, any person shall have the right to obtain communication of the data relating to him recorded in the VIS and of the Member State which transmitted it to the VIS ***from any authority as referred to in Article 23(3). Whenever a person requests data***

Member State.	***relating to him or her, that authority shall send a copy of the request to the competent national supervisory authority as provided for in Article 34 for inclusion in the chapter on the relevant Member State provided for in Article 40(2).***

Justification

It should be made clear that such communication can be requested in any Member State and that the competent authorities in this regard are the data controllers (see EDPS (p.15) and the Article 29 WP (p.19-20)).

Both the first (SEC(2004)557, p.15) and the second (SEC(2005)839, p. 14) annual report on Eurodac reported that there were a large number of 'special searches' being made without the national supervisory authorities being able to confirm that these were indeed cases in which persons requested access to their own data. To avoid any unexplained special searches in the future they should be documented better.

Amendment 103
Article 31, paragraph 2

2. Any person may request that data relating to him which is inaccurate be corrected ***or*** that data recorded unlawfully ***may*** be deleted. The correction and deletion shall be carried out without delay by the Member State responsible, in accordance with its laws, regulations and procedures.	2. Any person may request that data relating to him which is inaccurate be corrected ***and*** that data recorded unlawfully be deleted. The correction and deletion shall be carried out without delay by ***the authority referred to in Article 23(3) of*** the Member State responsible, in accordance with its laws, regulations and procedures.

Justification

The deletion of data recorded unlawfully should be an obligation and not an option for the data controllers. Otherwise, this provision will breach the principles set forth in Article 6 of Directive 95/45 and is not in line with Article 31(4) of the Regulation. This deletion is also recommended by the Article 29 WP. It should also be made explicit that the authority responsible for correcting and deleting the data is the data controller.

Amendment 104

Article 31, paragraph 3

3. If the request is made to a Member State, other than the Member State responsible, the authorities of the Member State to which the request has been lodged shall contact the authorities of the Member State responsible. The Member State responsible shall check the accuracy of the data and the lawfulness of its processing in the VIS.	3. If the request ***as provided for in Article 31(2)*** is made to a Member State, other than the Member State responsible, the authorities of the Member State to which the request has been lodged shall contact the authorities of the Member State responsible. The Member State responsible shall check the accuracy of the data and the lawfulness of its processing in the VIS.

Justification

It needs to be specified exactly which cases these are, since according to Article 31(1) no cooperation between authorities is necessary and therefore is not provided for. This was suggested by the EDPS in his opinion on the VIS, p. 15 footnote 19.

Amendment 105
Article 31, paragraph 6

6. The Member State responsible shall also provide the person concerned with information explaining the steps which he can take if he does not accept the explanation provided. This shall include information on how to bring an action or a complaint before the competent authorities or courts of that Member State and any financial or other assistance that is available in accordance with the laws, regulations and procedures of that Member State.	6. The Member State responsible shall also provide the person concerned with information explaining the steps which he can take if he does not accept the explanation provided. This shall include information on how to bring an action or a complaint before the competent authorities or courts of that Member State and any financial or other assistance, ***including from the national supervisory authorities referred to in Article 34,*** that is available in accordance with the laws, regulations and procedures of that Member State.

Justification

This addition is suggested by the Article 29 WP in their opinion on VIS, p. 20.

Amendment 106
Article 32, paragraph 1

1. The competent authorities of the	1. The competent authorities ***referred to in***

Member States shall cooperate actively to enforce the rights laid down in Article 31(2), (3) and (4).	***Article 23(3)*** of the Member States shall cooperate actively to ***properly*** enforce the rights laid down in Article 31 (2), (3) and (4).

Justification

The competent authorities in this regard should be clearly identified.

Amendment 107
Article 34, title

National supervisory authority	National ***independent*** supervisory authority

Justification

According to Article 28(1) of Directive 95/46/EC of the European Parliament and of the Council, the national supervisory authority shall act with complete independence in exercising the functions entrusted to them. It is important that this is stated explicitly.

Amendment 108
Article 34

Each Member State shall require the national supervisory authority or authorities established in accordance with Article 28(1) of Directive 95/46/EC to monitor independently, in accordance with its national law, the lawfulness of the processing, in accordance with this Regulation, of personal data by the Member State in question, including their transmission to and from the VIS.	Each Member State shall require the national supervisory authority or authorities established in accordance with Article 28(1) of Directive 95/46/EC to monitor independently, in accordance with its national law, the lawfulness of the processing, in accordance with this Regulation, of personal data by the Member State in question, including their transmission to and from the ***national interfaces of the*** VIS. ***To that end, the authorities referred to in Article 23(3) shall supply any information requested by the national supervisory authorities and shall, in particular, provide them with information on the activities carried out in accordance with Articles 24 and 25(1), grant them access to their records as***

	referred in Article 28 and allow them access at all times to all their premises.

Justification

It should be clearly stated that the national supervisory authorities monitor the lawfulness of the transmission of personal data to and from the National Interfaces of the VIS whereas the EDPS monitors the lawfulness of the transmission of data between the National Interfaces and the Central VIS (see EDPS, p. 15).

As for the obligation of the controllers to supply all the information requested by the national supervisory authorities, there is no reason to have such a provision only for the Commission (Article 35(3)) and not also for the Member States.

Amendment 109
Article 35, paragraph 2

2. ***In the performance of its tasks,*** the European Data Protection Supervisor shall***, if necessary, be actively supported by the national supervisory authorities.***	2. The European Data Protection Supervisor ***and the national supervisory authorities*** shall ***cooperate actively with each other. The European Data Protection Supervisor shall convene at least two meetings a year with the national supervisory authorities in order to discuss the application of this Regulation. The European Data Protection Supervisor shall bear the costs of those meetings.***

Justification

The cooperation between the *EDPS and the national supervisory authorities needs to be structured and enhanced in order to increase the overall effectiveness of the supervisory activities set up by this Regulation. This has been recommended also by the EDPS in his Opinion on the VIS, p. 15.*

Amendment 110
Article 35, paragraph 3 a (new)

	3a. The European Data Protection Supervisor shall request every four years

an independent specialist information systems auditor to conduct an audit of the VIS according to International Auditing Standards for Information Systems. The auditor's report shall be sent to the European Parliament, the Council, the Commission and the supervisory bodies referred to in Articles 34 and 35. The costs shall be borne by the general budget of the European Union.

Justification

The rapporteur considers that an external systematic auditing of the VIS is very important in terms of safeguards for the good functioning of the system.

Amendment 111
Article 35 a (new)

Article 35 a

Staff training

Before being authorised to process data stored on the VIS, staff of the authorities with a right to access the VIS shall receive appropriate training about data-security and data-protection rules and shall be informed of the criminal offence and penalties referred to in Article 29.

Justification

The rapporteur considers it important to explicitly mention that all these authorities are required to complete security and data privacy training and that they should be aware of the criminal offence and penalties referred to in Article 29.

Amendment 112
Article 36, paragraph 2

2. The measures necessary for the technical implementation ***of the functionalities referred to in paragraph 1*** shall be	2. The ***following*** measures necessary for the technical implementation shall be adopted in accordance with the procedure

adopted in accordance with the procedure referred to in ***Article 39(2).***	referred to in ***Article 39:***

Justification

The proposal in its current stage does not allow for a clear identification of the measures which will be adopted by means of the comitology procedure and therefore this should be done here, not least for reasons of transparency.

In the rapporteur's view, the comitology procedure should not be applicable to issues liable to impact on fundamental rights and personal data protection. As stressed by both the EDPS (p. 16) and by the Article 29 WP (p. 22), these sensitive issues should be adopted by means of a Regulation, in accordance with the co-decision procedure.

Amendment 113
Article 36, paragraph 2, point (a) (new)

	(a) procedures for: entering, linking applications, accessing, amending, deleting, advance deleting, keeping and accessing the records;

Justification

See justification for amendment to Article 36(2). The technical arrangements to implement the measures announced in this paragraph should be decided by comitology.

Amendment 114
Article 36, paragraph 2, point (b) (new)

	(b) implementing rules for data security, including the identification of an IT data-security standard;

Justification

See justification for amendment to Article 36(2) and to Article 26(3)(a)(new).

Amendment 115
Article 36, paragraph 2, point (c) (new)

(c) implementation of the procedures provided for in Article 14.

Justification

See justification for amendment to Article 36(2). In order to integrate the technical functionalities on the consultation between central authorities according to Article 17(2) of the Schengen Convention (current VISION network) into the VIS and to use the VIS for the transmission of other messages in the framework of consular cooperation and for request for documents, technical arrangements are necessary and these should be decided by means of the comitology procedure.

Amendment 116
Article 38, paragraph -1 (new)

The VIS shall start to operate only after the successful completion of a comprehensive three-month test of the system, to be conducted by the Commission together with the Member States. The Commission shall inform the European Parliament of the results thereof.

Justification

The rapporteur considers that such a comprehensive three month test is an essential guarantee to ensure the proper operation of the VIS system. It is obvious that should serious problems arise during the test, the VIS should not start operations.

Amendment 117
Article 39, paragraph 1

1. The Commission shall be assisted by ***the*** committee ***set up by Article 5(1) of Regulation (EC) No 2424/2001.***	1. The Commission shall be assisted by ***a*** committee, ***hereinafter "the Committee". It shall be composed of the representatives of the Member States and chaired by the***

representative of the Commission.

Justification

The right of the Council, as legislator, to partly delegate its implementing powers to the Commission, has been recognized by the European Court of Justice since 1970 (decision Koster 25/70). The Court of Justice decision also required that such a delegation should specify the principles as well as the conditions for its exercise (as setting-up Committees of Member States' representatives to assist the Commission) and eventually the power 'to call-back' the delegation.

These principles have been inserted in Article 202 TEC. The Council however 'forgot' in implementing the Article 202 (in the Comitology Decision 1999/468) to recognize the same right of 'call-back' in acts decided by codecision for the European Parliament.

In order to have the benefit of this right, the European Parliament would have to insert it in the initial decision foreseeing the delegation of implementing powers. This is the purpose of the amendments to Article 39. Instead of making reference to the Articles of the Decision 1999/468, the amendments reproduce their content when it comes to the role of the Council, and propose similar prerogatives for the European Parliament (including the power to 'call back').

Amendment 118
Article 39, paragraph 2

2. ***Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.***	2. ***The Committee shall adopt its rules of procedure.***
The period laid down in Article 4(3) of Decision 1999/468/EC shall be two months.	

Justification

See justification for amendment to Article 39(1).

Amendment 119
Article 39, paragraph 3

3. ***The committee shall adopt its Rules of Procedure.***	3. ***Where this Regulation imposes procedural requirements for the adoption of implementing measures, the***

representative of the Commission shall submit a draft of those measures to the Committee and to the European Parliament.

The Committee shall deliver its opinion on the draft within a time-limit which the chairman may lay down according to the urgency of the matter which shall not be less than one month. The opinion shall be delivered by the majority laid down in Article 205(2) of the Treaty. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

4. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee and if no objection has been raised in the meantime by the competent committee of the European Parliament.

5. Where the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, or an objection has been raised by the competent committee of the European Parliament, the Commission shall, without delay, submit to the Council and to the European Parliament a proposal relating to the measures to be taken.

6. If, within a period which may not exceed three months from the referral, the proposal has not been rejected either by the European Parliament, by an absolute majority of its members, or by the Council, acting by qualified majority, it shall be adopted by the Commission. Otherwise the Commission shall submit an amended proposal or present a legislative proposal on the basis of the Treaty.

7. Without prejudice to any implementing measures already adopted, application of the provisions of this Regulation which provide for the adoption of technical rules and decisions shall cease four years after the entry into force of this Regulation.

Acting on a proposal from the Commission, the European Parliament and the Council may extend the period of validity of the relevant provisions, in accordance with the procedure laid down in Article 251 of the Treaty, and, with that aim in view, shall review those provisions prior to expiry of the four-year period.

Justification

See justification for amendment to Article 39(1).

Amendment 120
Article 39, paragraph 3 a (new)

3a. The authorities referred to in Articles 34 and 35 shall participate in the Committee.

Justification

The rapporteur considers that the national supervisory authorities and the EDPS should be given the possibility to advise on the choices made by this Committee in order to ensure that they are respectful of the data protection principles.

Amendment 121
Article 40, paragraph 1

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

Justification

As pointed out by the EDPS in his Opinion on the VIS (p. 14), monitoring and evaluation should not only concern the aspects of output, cost-effectiveness and quality of services, but

also compliance with legal requirements, especially in the field of data protection. The scope of Article 40 is therefore extended to also cover this aspect.

Amendment 122
Article 40, paragraph 2

2. Two years after the VIS starts operations and every two years hereafter, the Commission shall submit to the European Parliament and the Council a report on the technical functioning of the VIS. This 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 to the European Parliament and the Council a report on ***lawfulness of processing and*** the technical functioning of the VIS. This report shall include ***a chapter on each Member State prepared by the national supervisory authorities referred to in Article 34 and a chapter prepared by the European Data Protection Supervisor referred to in Article 35. Those chapters shall include an evaluation of the records referred to in Article 28. That report shall also include*** 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 shall answer any questions raised by the institutions in that context.***

Justification

The report should include chapters prepared by data protection experts, as this will ensure a more structured and enhanced cooperation between the entities involved in the system. The different authorities will be encouraged to work together and this will have a positive outcome for the overall functioning of the system. One should also underline that at any stage, information from the national protection authorities is sent to other involved parties so this could be a good opportunity to communicate their reports to others. See also the justification for amendment to Article 40(1).

Amendment 123
Article 40, paragraph 3

3. Four years after the VIS starts operations and every four years thereafter, the Commission shall produce an overall	3. Four years after the VIS starts operations and every four years thereafter, the Commission shall produce an overall

evaluation of the VIS including examining results achieved against objectives and assessing the continuing validity of the underlying rationale and any implications of future operations. The Commission shall submit the reports on the evaluations to the European Parliament and the Council.	evaluation of the VIS including examining results achieved against objectives***, the lawfulness of processing*** and assessing the continuing validity of the underlying rationale and any implications of future operations. The Commission shall submit the reports on the evaluations to the European Parliament and the Council.

Justification

See justification for amendment to Article 40(1).

EXPLANATORY STATEMENT

The VIS is an ambitious and far-reaching project. In order to have confidence in it, assurance is necessary that it is designed and constructed in a way which both meets legitimate objectives and ensures that respect for its rules can be effectively delivered.

I. Building the right system

1. Purpose and access

The rapporteur believes that improvement of the common visa policy should be the heart of the system, as demonstrated in the choice of legal bases for the proposal: Art 66 TEC (administrative cooperation) and Art 62.2bii TEC (rules on procedures and conditions for issuing short stay visas).

There is a risk that the data stored for this purpose is also considered "useful" for other purposes, but according to case law[1] on data protection "a pressing social need" is required.

The rapporteur has consequently introduced a distinction between the VIS scheme purpose, namely the improvement of the common visa policy, and other "derived benefits". This distinction avoids putting into the system data which is not required for this purpose and ensures that access is granted only to those authorities which need it.

Concerning the designation of authorities with access to the VIS, the rapporteur proposes to clearly define them by making reference, where possible, to Community law and to limit their access to the VIS only to those situations where it is necessary and proportionate.

Regarding access to the VIS by border control authorities (Art 16) the rapporteur considers that there is no need for them to access the central database in every case. Only limited data is necessary to verify the identity of the person and/or the authenticity of the visa, and that can be stored in the visa chip[2]. Access to the central database would be necessary only when the decentralised system is inadequate. The rapporteur also considers that border control authorities need access to data only for checks on the visa at external border crossing points, since any checks within the territory are the responsibility of the immigration authorities (Art 17).

Concerning the access to the VIS by asylum authorities, the rapporteur believes that this should be granted only in order to determine the Member State responsible for examining an asylum application. The use of the VIS for examining an asylum application (Art 19) would be neither necessary nor proportionate.

The rapporteur proposes to define immigration authorities clearly and to exclude the use of the VIS for the return of illegal immigrants (Art 17) since there is so far no Community legal

[1] See European Court of Human Rights; Gillow vs. UK; Series A No. 109; in particular para. 55
[2] See the Opinion of the EDPS, p. 11 and the Opinion of the Article 29 Working Party, p. 16.

basis for returns.

As regards authorities responsible for internal security, the rapporteur is aware of political intentions to give them access (and that this pattern will be repeated in the case of SIS II, probably Eurodac too). She accepts that it is at least preferable to regulate their access in an EU legal instrument instead of leaving it entirely open to national law and practice. But she proposes that there should be included in the current proposal, by means of a bridging clause, the main points the expected 'Third Pillar' measure should cover. This is without prejudice to the general political and legal debate that needs to take place more vigorously about EU data collection and sharing. The rapporteur stresses that exploiting any particular Community instrument for security purposes requires the express support of Parliament.

2. Collection and storage of data

The data to be stored in the VIS is essentially taken from the uniform visa application form (annex 16 of the CCI[1]) which the applicants have to fill in. Some data will be stored for each application (Art 6) and some only in case of a central consultation (Art 7).[2]

The rapporteur considers that it is excessive and disproportionate to store the data on persons issuing invitations for each application; this data could be necessary only in the case of a central consultation. Therefore this data field is moved from Art 6 to Art 7.

The storage of biometric data (fingerprints and photographs) is a new departure. The Commission says that the VIS "would become the largest biometric database in the world."[3] The method of collecting the biometric data still needs to be defined through a Commission proposal modifying the CCI. One particularly important issue is who will be exempted from the fingerprinting obligation: the rapporteur believes that children (under 12) and elderly (over 79) should be exempted.

The use of biometrics on such an unprecedented scale requires extra safeguards. The rapporteur proposes two procedures where the fingerprints of a person cannot be used (Art 6.1.a) and where a person claims to be falsely rejected by the system (Art 6.1.b). The starting point has to be the assumption of a bona fide applicant.

The rapporteur proposes more nuanced retention periods in order to respond to different situations which may occur in practice or different types of visa issued and to thus respect the proportionality principle (Art 20). The rights of persons on whom data is stored in the VIS as regards, for instance, the right of information (Art 30) are enhanced.

II. A trustworthy system

Respect for rules requires clear and comprehensible drafting and strict control which is both internal (built into the system) and external (monitors the system from the outside).

[1] Common Consular Instructions
[2] This is a procedure in which a Member State has to consult another Member State before issuing a visa to applicants of certain nationalities. This list of third countries whose citizens are subject to this procedure is a classified document.
[3] eGovernment News, 10.1.2005, http://europa.eu.int/idabc/en/document/3762/330

1. Clear rules

A series of clarifying amendments are introduced, for example regarding the definitions of authorities with access, 'applicant', 'group', 'status information', 'processing' and 'threat to public health'. It also covers all the amendments introducing cross-references to avoid ambiguities. Several amendments seek to clarify responsibilities (for example on Art 23.1, 30.2, 31.2, 32.1, 34.1) and procedures (Art 5.2, 21.2, 22.2). The rapporteur stresses the need for clear identification of scope of the comitology procedure (procedure rewritten in Art 39) and proposes an exhaustive list of measures in Art 36.2. Clear and detailed rules are introduced on data security (Art 26), which should be adopted by comitology.

2. "Internal control"

A central element of the amendments seeking to protect against abuse is the limitation of the number of "keys" to access the database. The rapporteur proposes "keys" fitting each practical situation in which the VIS will be used (application for a visa at a consulate; identification of illegal immigrants; asylum authorities) or could be used (border control). Readily available "keys", like the name of a person, were deleted. In the case of border control, when access to the central database is necessary only where a chip or smartcard does not work, the rapporteur considers that the only key necessary to access the database is the number of the visa.

Clear responsibilities are critical. Certain tasks were added for particular actors (Art 25, Art 34.1). The Commission is requested to ensure that at all times the best available technology is used. Better technology reducing the error rates for biometrics should for instance be implemented immediately when it is available.

It is essential to have unique user identities with confidential passwords (to avoid use of the same login by the entire staff of a single authority) and user profiles. Staff training, the treatment of serious infringements as a criminal offence and a test before the VIS becomes operational are all important. The list of authorities with access should specify the purpose for which access is granted, and consolidated updated versions should be constantly published. A requirement is introduced in Art 31.1 to keep account of instances when a data subject asks what data is stored on him, to ensure that this facility is not abused by a Member State authority to give itself an opportunity for inappropriate access (as may be happening with Eurodac). Finally, the concept of internal auditing, as used for financial control, is introduced here (Art 28a).

3. "External control"

It is proposed to reinforce the rights of the European Data Protection Supervisor (EDPS) and the national supervisory authorities, for example a right to request information, access to premises (Art 34.1), participation in comitology procedure (Art 39.5). Cooperation between all "controlling authorities" is also crucial, and it is proposed to strengthen the cooperation between EDPS and national supervisory authorities (meetings (Art 35.2), reporting (Art 40.2)) and between national supervisory authorities and internal controllers (Art 28a new).

An external audit to be conducted every four years by an independent specialist information

systems auditor (Art 35.3a new) is proposed.

The rapporteur stresses however that the Commission as the guardian of the Treaty has the ultimate responsibility to ensure that the Member States correctly apply the VIS Regulation. Although the Commission will not and should not have access to the data stored in the VIS, it should actively research all cases which are brought to its attention, be it through statistics and records, complaints of individuals or supervisory authorities, and should not hesitate to bring forward infringement cases against Member States not respecting this Regulation.

III. Elements still missing

The rapporteur looks forward to receiving the proposal of the Commission on collection of the biometric identifiers (revising the CCI) and the 'Third Pillar' proposal covering access by authorities responsible for internal security. In addition the rapporteur awaits the Commission communication on interoperability, although in the expectation that the Commission will not be proposing further access to the VIS or connections with other databases.

Finally, the rapporteur awaits the evaluation report on the functioning of the Dublin II Regulation[1], an important element for the good understanding of the necessity and proportionality of the measures included in the current proposal related to that Regulation.

[1] See Art. 28 of the Dublin II Regulation, (EC) 343/2003, 18 February 2003.