

Proposal to amend Regulation 767/2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas and Regulation 810/2009 establishing a Community Code on visas (the Visa Code)

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Consultation strategy

[A] Consultation scope and objectives

During 2015-2016 the Commission carried out a REFIT evaluation of the functioning of the Visa Information System¹ (henceforth the VIS). The final Report of the evaluation, adopted in October 2016, identified a number of areas where improvement was necessary or could be envisaged. The VIS will be further developed to respond to the new challenges in visa, border and migration policy. A number of consultations and studies have been launched to look in particular into:

- interconnectivity and interoperability with other information systems;
- the possibility of extending the VIS to contain data, including fingerprints, of applicants for long stay visas,
- Options to enhance effective return of irregular migrants by e.g. storing a scanned copy of the visa applicant's travel document in VIS,
- feasible options to improve access for law enforcement authorities while respecting the highest data protection standards,
- ways to respond to concerns of trafficking in human beings involving children and child abductions, and irregular migration involving children by lowering the fingerprinting age for children;
- improving data quality in the system and facilitating the exchange of information and consultations for security purposes;
- harnessing the potential of the VIS data into statistics on migratory trends and phenomena, to provide a more solid evidenced basis for our policies in this area.

In the context of the VIS evaluation, extensive consultations have already taken place with the Member States authorities which manage or access the VIS, regarding how this system works and how to improve its functions. Three feasibility studies have been launched, to feed into an impact assessment leading to a proposal to revise the VIS legal basis.

The first study was carried out by eu-LISA during November 2016-February 2017 and covered all technical improvements necessary for the system. A second one will focus specifically on the issues of lowering the fingerprinting age for children and including a copy of travel documents in the VIS. A third one is looking at the possibility and options of extending the VIS to include data on national visas, residence permits, residence cards and local traffic permits, to allow Member States to consult such data, as part of a feasibility study on a Repository of information on documents for long stay or residence and local border traffic permits.

¹ SWD (2016) 327, SWD (2016) 328 and COM(2016)655

Consultations activities will now be carried out in relation to the three issues subject to the second and third studies mentioned above, due to the political importance, as well as expected societal impact and financial implications.

The envisaged measure to lower the fingerprinting age for children is of particular significance for the general public and should make the object of an open public consultation, due to its possible implications on data protection and children rights. This consultation is pertinent to and will feed into the second study on the feasibility and implications of lowering the fingerprinting age for children and on storing a scanned copy of the visa applicants' travel document in the VIS.

The two other topics – including copies of travel documents and data on national visas and residence documents in the VIS – are of a more technical nature and targeted consultations of the stakeholders are foreseen as part of the studies mentioned above. No open public consultation is necessary for these topics.

Lowering the fingerprinting age for children

Article 57(3) of the Visa Code² requires that the issue of the sufficient reliability for identification and verification purposes of fingerprints of children under the age of 12 and, in particular, the issue of how fingerprints evolve with age, be addressed based on the results of a study carried out under the Commission's responsibility. The study was carried out in 2013 by the Digital Citizen Security Unit of the Joint Research Centre of the Institute for the Protection and Security of the Citizen (JRC-IPSC). Its results were published in the 'Fingerprint Recognition for Children' report (Report EUR 26193 EN). These conclusions confirm that, under certain technical conditions, **fingerprint recognition of children aged between 6 and 12 years is achievable** with a satisfactory level of accuracy.

In addition to the technical study, a study on the necessity and proportionality of lowering the fingerprinting age for children is also under way, as referred to above.

Stakeholder consultations will be undertaken in relation to the latter study that will look in-depth into the legal, human rights/child protection, (including the rights of the child and child safeguarding), administrative, and data protection implications of lowering the fingerprinting age for children.

Including a copy of the travel document in the VIS

The study on the feasibility and implications of storing a scanned copy of the visa applicants' travel document in the VIS encompasses an in-depth consultation of the stakeholders. At this moment, storing a copy of the applicant's travel document in the VIS is not included in the VIS Regulation³, or in the Consular Handbook⁴.

² Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas, OJ L 243, 15.9.2009, p. 1.

³ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas

In order to propose a new measure as a future amendment to the VIS, the input of stakeholders must be mapped and carefully analysed. The external contractor should therefore consult and seek the opinions of stakeholders on storing a copy of the travel document in the VIS.

The consultation will contribute to the final impact assessment on the proposed legislative revision, and must in particular shed light on the necessity and proportionality of the measure for visa and return purposes, including from human rights protection and data protection perspective.

Including data on long stay visas, residence documents and local border traffic permits into the VIS

The study on the repository for documents for long stay or residence will assess the need, feasibility and possibilities for such repository. The study will address, among others, the current gap created by the fact that a MS cannot check the validity of a documents issued by another MS as each MS only keeps a record of the document it issued itself and its status (e.g. issued, withdrawn, expired). However, a long stay visa or residence document issued by one Member States gives the right to enter and stay of 90 days within any 180 days on Schengen territory.

As there are a number of similarities between the idea of a repository for documents for long stay and residence, and the VIS (in terms of desired functionality, purpose and uses) the study examines whether the VIS could be further developed to address these needs, meaning to extend its functions and scope to include long stay visas, residence documents and card, and/or local border traffic permits.

To answer whether the VIS can function as a repository for long stay visas and residence documents, in view of examining the necessity, proportionality, including from human rights protection and data protection perspective, and operational implications of this measure, the study must consult the stakeholders for input. Their feedback will feed into the final study on the inclusion or not of the data on long stay visas and residence documents into the VIS.

[B] Mapping Stakeholders

Lowering the fingerprinting age for children

The following stakeholders will be consulted in relation to the issue of lowering the fingerprinting age of children in the visa procedure:

- Ministry/department for the rights of the child
- national authorities and agencies responsible for child protection;
- anti-trafficking authorities, including national rapporteur on trafficking;
- authorities responsible for consular affairs;
- migration authorities;
- EDPS;
- National Data Protection Authorities;
- Authorities and non-governmental organisations, including umbrella organisations, in Member States working on the rights of the child,

⁴ Handbook for the organisation of visa sections and local Schengen cooperation - https://ec.europa.eu/home-affairs/sites/homeaffairs/files/pdf/policies/borders/docs/c_2010_3667_en.pdf

- The Ombudsperson for Children in each Member State;
- EU Agency of Fundamental Rights (FRA);
- The general public.

Including a copy of the travel document in the VIS

The following stakeholders will be consulted in relation to the issue of storing a copy of the travel document in the VIS:

- national authorities responsible for consular affairs;
- authorities dealing with migration and return;
- authorities managing, or dealing with, police cooperation;
- EDPS;
- National Data Protection Authorities

Including data on long stay visas, residence documents and local border traffic permits into the VIS

The following stakeholders will be consulted for the study on including the storage of long stay visas and residence documents into the VIS:

- All national authorities that have access to enter, amend, delete or consult data in the VIS,
- National authorities responsible for checks at external border crossing points,
- Authorities managing, or dealing with, police cooperation.
- EDPS;
- National Data Protection Authorities.

[C] Consultation methods and activities

The inception impact assessment relating to this initiative will be published on the "[Contribute to law-making](#)" page of the Europa website. Stakeholders are invited to provide their views on the inception impact assessment within a period of 4 weeks following the publication date.

Lowering the fingerprinting age for children

- Personal interviews conducted by the contractor with government representatives and other key stakeholders in the Member States, EDPS and FRA on their interest in and implications over their work of the measure to lowering the fingerprinting age for children.
- **Open public on-line consultation** published on “Europa website”. The consultation will run for 12 weeks between April and June 2017 and will focus on consequences of the measure over:
 - The rights of the child, in particular privacy and child protection
 - Child protection from abduction, trafficking and irregular migration;
 - Advantages and inconveniences as regards migration policy and possibility to access EU territory.

Contributions to the open public consultation will in particular be sought from the following stakeholder groups:

- EDPS,
- National Data Protection Authorities,
- Authorities and non-governmental organisations, including umbrella organisations, in Member States involved in children's rights;
- Ombudspersons for Children in Member States;
- EU Agency for Fundamental Rights (FRA);
- The general public

The open public consultation will take place in all EU official languages and be advertised through the consultation page of the Europa website: https://ec.europa.eu/info/consultations_en, as well as through indirect contacts by the contractor carrying out the study on the feasibility, necessity and proportionality of lowering the fingerprinting age for children, through targeted surveys, expert meetings and phone calls with the main stakeholders involved. The study (including stakeholders' consultation) will take place between June – October 2017.

Including a copy of the travel document in the VIS

The stakeholders listed under section B for this issue will be consulted by the external contractor. The contractor will consult national authorities of all Member States, including interviews with those of at least 11 different Member States, selected according to geographical (north, south, east, west) and demographic considerations (bigger and smaller Member States), in order to ensure a balanced approach, with a focus on:

- Justification, in terms of necessity and proportionality, and
- Legal and practical implications.

Including data on long stay visas, residence documents and local border traffic permits into the VIS

The stakeholders listed under section B for this issue will be consulted by the external contractor. The contractor will consult national authorities of all Member States, including interviews with those of at least 11 different Member States, selected according to geographical (north, south, east, west) and demographic considerations (bigger and smaller Member States), in order to ensure a balanced approach, with a focus on:

- Justification, in terms of necessity and proportionality, and
- Legal and practical implications.

[D] Consultation webpage

A dedicated webpage will be set up on DG HOME's website to present the consultation activities carried out as part of this initiative. The inception impact assessment for the initiative as well as the consultation strategy will be published on this webpage.

The open public consultation will be published [DG HOME's website](#) and advertised through the main [Europa webpage](#) dedicated to consultations. It will also be promoted via a press release.