

Procedure file

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

| Key players | | | |
|-------------------------------|---|---|------------|
| European Parliament | Committee responsible | Rapporteur | Appointed |
| | LIBE Civil Liberties, Justice and Home Affairs | | 08/04/2008 |
| | | PPE-DE BREJC Mihael | |
| | Committee for opinion | Rapporteur for opinion | Appointed |
| | AFET Foreign Affairs | The committee decided not to give an opinion. | |
| | DEVE Development | The committee decided not to give an opinion. | |
| Council of the European Union | Council configuration | Meeting | Date |
| | Justice and Home Affairs (JHA) | 2908 | 27/11/2008 |
| European Commission | Commission DG | Commissioner | |
| | Justice and Consumers | BARROT Jacques | |

| Key events | | | |
|------------|---|---|---------|
| 22/02/2008 | Legislative proposal published | COM(2008)0101 | Summary |
| 11/03/2008 | Committee referral announced in Parliament, 1st reading | | |
| 29/05/2008 | Vote in committee, 1st reading | | Summary |
| 02/06/2008 | Committee report tabled for plenary, 1st reading | A6-0208/2008 | |
| 01/09/2008 | Debate in Parliament |  | |
| 02/09/2008 | Results of vote in Parliament |  | |
| 02/09/2008 | Decision by Parliament, 1st reading | T6-0383/2008 | Summary |
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|------------|---|--|--|
| 27/11/2008 | Act adopted by Council after Parliament's 1st reading | | |
| 14/01/2009 | Final act signed | | |
| 14/01/2009 | End of procedure in Parliament | | |
| 04/02/2009 | Final act published in Official Journal | | |

Technical information

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

Documentation gateway

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|---|--------------------------------|------------|-----|---------|
| Legislative proposal | COM(2008)0101 | 22/02/2008 | EC | Summary |
| Committee draft report | PE405.724 | 18/04/2008 | EP | |
| Amendments tabled in committee | PE406.119 | 15/05/2008 | EP | |
| Committee report tabled for plenary, 1st reading/single reading | A6-0208/2008 | 02/06/2008 | EP | |
| Text adopted by Parliament, 1st reading/single reading | T6-0383/2008 | 02/09/2008 | EP | Summary |
| Commission response to text adopted in plenary | SP(2008)6073 | 17/10/2008 | EC | |
| Draft final act | 03676/2008/LEX | 14/01/2009 | CSL | |

Additional information

| | |
|----------------------|-------------------------|
| National parliaments | IPEX |
| European Commission | EUR-Lex |

Final act

[Regulation 2009/81](#)
[OJ L 035 04.02.2009, p. 0056](#) Summary

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

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

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

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

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

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

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

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

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

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

In short, the proposed provisions include:

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

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

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

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Mihael BREJC (EPP-ED, SI) approving, subject to an amendment, the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 as regards the use of the Visa Information System (VIS) under the Schengen Borders Code.

The only amendment adopted by the committee, under the codecision procedure, introduces a derogation to the general approach recommended by the proposal. MEPs therefore recommend that the VIS should be consulted using the number of the visa sticker only or, on a random basis, the number of the visa sticker in combination with the verification of fingerprints.

A series of conditions must be satisfied in order for this derogation to apply:

- when traffic of such intensity arises that the waiting time at the border crossing point becomes excessive;
- all resources have already been exhausted in terms of staff, facilities and organisation;
- an assessment has been made that there is no risk related to internal security and illegal immigration.

Where there is any doubt as to the identity of the holder of the visa and/or the authenticity of the visa, the VIS shall be consulted using the number of the visa sticker in combination with the verification of fingerprints.

The decision to consult the VIS shall be taken at least at the level of the border guard in command at the border crossing point.

MEPs request that each Member State transmit once a year a report on the application of this derogation. Three years after the date of application of this Regulation, the Commission shall transmit to the European Parliament and the Council a comprehensive evaluation of this derogation. On the basis of that evaluation, the European Parliament or the Council may invite the Commission to propose appropriate amendments to the Regulation.

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

The European Parliament adopted, by 567 votes to 75 and 49 abstentions, a legislative resolution amending the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 as regards the use of the Visa Information System (VIS) under the Schengen Borders Code. The report had been tabled for consideration in plenary by Mihael BREJC (EPP-ED, SI) on behalf of the Committee on Civil Liberties, Justice and Home Affairs. The amendments were the result of a compromise between Parliament and Council.

These amendments, adopted under 1st reading of the codecision procedure, introduce a derogation to the general approach recommended by the proposal. Parliament stated that the use of the VIS should entail a systematic search in the VIS using the number of the visa sticker in combination with a verification of fingerprints. However, given the potential impact of such searches on waiting times at border crossing points, it should be possible, for a transitional period by way of derogation and in strictly defined circumstances, to consult the VIS without a systematic verification of fingerprints. Member States should ensure that this derogation is used only where the conditions are fully met and that the duration and frequency of application of this derogation is kept to a strict minimum at the individual border crossing points.

The conditions which must be satisfied are:

- when traffic of such intensity arises that the waiting time at the border crossing point becomes excessive; and
- all resources have already been exhausted in terms of staff, facilities and organisation; and
- an assessment has been made that there is no risk related to internal security and illegal immigration.

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

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

Each Member State shall transmit once a year a report on the application of the derogation to the European Parliament and the Commission, which should include the number of third-country nationals who were checked in the VIS using the number of the visa sticker only and the length of the waiting time.

The derogation will apply for a maximum period of three years, beginning three years after the VIS has started operations. The Commission shall, before the end of the second year, transmit to the European Parliament and the Council an evaluation of their implementation. On the basis of that evaluation, the European Parliament or the Council may invite the Commission to propose appropriate amendments to the Regulation.

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

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

LEGISLATIVE ACT: Regulation (EC) No 81/2009 of the European Parliament and of the Council amending Regulation (EC) No 562/2006 as regards the use of the Visa Information System (VIS) under the Schengen Borders Code.

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

[Regulation \(EC\) No 767/2008](#) concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) aims at improving the implementation of the common visa policy. It also provides that the purposes of the VIS include facilitating both checks at external border crossing points and the fight against fraud.

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

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

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

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

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

The conditions which must be satisfied are:

- when traffic of such intensity arises that the waiting time at the border crossing point becomes excessive;
- all resources have already been exhausted in terms of staff, facilities and organisation;
- an assessment has been made that there is no risk related to internal security and illegal immigration.

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

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

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

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