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**PROPOSAL**

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from: European Commission  
dated: 25 November 2005

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

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Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Javier SOLANA, Secretary-General/High Representative.

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Encl.: COM(2005) 600 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.11.2005  
COM(2005) 600 final

2005/0232 (CNS)

Proposal for a

**COUNCIL DECISION**

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

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Grounds for and objectives of the proposal

While progressively establishing an area of freedom, security and justice, the European Union shall ensure the free movement of persons and a high level of security. In this context, top priority has been given to the development and establishment of the Visa Information System (VIS) as a system for the exchange of visa data between Member States. It is one of the key initiatives within the EU policies aimed at achieving a higher level of security.

On 19 February 2004 the Council adopted conclusions on the development of the Visa Information System, underlining that one of the objectives of the VIS is to contribute towards improving the administration of the common visa policy and towards internal security and to combating terrorism.

On 8 June 2004 the Council adopted Council Decision 2004/512/EC establishing the Visa Information System (VIS), which constitutes the required legal basis to allow for the inclusion in the budget of the European Communities of the necessary appropriations for the development of VIS and the execution of that part of the budget, defines the architecture of the VIS and gives the Commission the mandate to develop the VIS at a technical level, assisted by the SIS II Committee. The national systems shall be adapted and/or developed by the Member States. In order to implement that Decision, the Commission presented on 28 December 2004 a proposal for a Regulation of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short stay-visas.

The further development and establishment of the VIS, in particular within the domain of internal security, including the combating of terrorism, requires the elaboration of a comprehensive legal framework, complementing the VIS regulation.

During its meeting of 7 March 2005, and reiterated on 13 July 2005, the Council adopted conclusions that 'in order to achieve fully the aim of improving internal security and the fight against terrorism', Member State authorities responsible for internal security should be guaranteed access to VIS, 'in the course of their duties in relation to the prevention, detection and investigation of criminal offences, including terrorist acts and threats', 'subject to strict compliance with the rules governing the protection of personal data'.

The objective of the present proposal is to establish the required legal basis under Title VI of the Treaty on the European Union to allow for and to lay down the conditions under which Member States' authorities responsible for internal security and the European Police Office (Europol) may access the Visa Information System (VIS). This will enable them to consult the VIS for the purposes of the prevention, detection and investigation of terrorist offences and the types of crime and the offences in respect of which Europol is competent to act pursuant to Article 2 of the Europol Convention.

- **General context**

The fight against terrorism is a priority for all Member States. The European Union is committed to jointly combating terrorism and to providing for the best possible protection for its citizens. The EU's strategy must be comprehensive, covering a wide range of measures. These aim at increasing co-operation in fields ranging from intelligence sharing to law enforcement in order to make it easier to find, detain and bring to justice terror suspects, in promoting and ensuring security while preserving and reinforcing individual rights and freedoms.

- **Existing provisions in the area of the proposal**

- The Europol Convention of 1995. Article 2 states that the objective of Europol is to improve, by means of the measures referred to in that Convention, the effectiveness and cooperation of the competent Member State authorities to prevent and combat terrorism, and other serious forms of international and organised crime. Europol, however, currently does not have access to data stored in the VIS.
- The Proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters (COM(2005) 475) adopted by the Commission on 4 October 2005. This instrument provides for the legal framework for a effective protection of personal data in matters which fall under Title VI of the Treaty on European Union.
- Proposal for a Council Framework Decision on the exchange of information under the principle of availability (COM(2005) 490) adopted by the Commission on 4 October 2005. This instrument excludes from its scope the access to the VIS.

- **Consistency with other policies and objectives of the Union**

The present initiative does not go beyond what is necessary to achieve its objective and limits its scope to terrorist offences as laid down in Council Framework Decision 2002/475/JHA on combating terrorism and to crimes falling within the competence of Europol. It also restricts the conditions to the use of VIS data to specific cases only, thereby excluding routine access. It authorises only national authorities competent for the prevention, detection or investigation of criminal offences to have access to the VIS, and by obliging these authorities to go through a central access point which will consult the VIS on their behalf, on a case-by-case basis and after receipt of a duly motivated request. Furthermore these Authorities responsible for internal security and the central access points are clearly listed in the Annex to this Decision.

This Decision seeks to ensure full respect for the right to liberty and security, the right to respect for private and family life, the right to protection of personal data and the principles of legality and proportionality of criminal offences and penalties (Articles 6, 7, 8, 48 and 49 of the Charter of Fundamental Rights of the European Union).

The Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters (2005/XX/JI), the Europol Convention and Regulation (EC) 45/2001 shall apply to the processing of personal data pursuant to this Decision. The Framework Decision requires Member States in particular to lay down effective, proportionate and dissuasive sanctions to be imposed in case of

infringement of data protection provisions, including criminal sanctions for particularly serious and intentionally committed infringements.

## **2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

### **• Consultation of interested parties**

No formal consultation prior to the presentation of this proposal has been conducted due to the urgency of the matter since the Council had requested the Commission to present the proposal by November 2005 and the legislative process for the underlying VIS Regulation had been initiated.

On 24 October 2005, the Commission invited and consulted experts representing the Governments of the EU Member States. Information was also exchanged with representatives of the government of Norway on the question of the development of the Schengen acquis. Other relevant interested parties, such as the Article 29 Working Party<sup>1</sup>, had already expressed views on the general objective of this proposal in relation to the proposal for the VIS Regulation.

### **• Collection and use of expertise**

Use has been made of the existing expertise assembled in relation to the proposal for the VIS Regulation.

### **• Impact assessment**

Based on the Council conclusions of 7 March 2005, the following options were considered: not presenting a Commission legislative proposal and therefore taking no action; creating the legal basis for an unlimited access to the VIS for Member State authorities responsible for internal security and to Europol; or creating the legal basis for a limited access to the VIS for Member State authorities responsible for internal security and to Europol.

Not presenting a Commission legislative proposal and therefore taking no action would have meant that the common Visa Information System (VIS) as a system for the exchange of visa data between Member States would not be legally accessible for law enforcement purposes. However, the inefficiencies in combating visa shopping, fraud and in conducting checks are causing also inefficiencies in relation to the internal security of the Member States. Criminals and suspected persons may obtain a visa or have chances to use a falsified visa when entering the Schengen area. As the exchange of VIS data is not covered by the scope of the Council Framework Decision on the exchange of information under the principle of availability, Member States would increase the demand for further police cooperation in this area at EU level sooner or later.

The VIS is a system which capability is estimated – in particular as regards biometric data – to be able to contain, as of 2007, the data concerning about 20 million visa applications annually. This would result in 70 million fingerprint data to be stored in the system for the five-year term set forth in the current VIS Regulation proposal.

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<sup>1</sup> The Working Party on the Protection of Individuals with Regard to the Processing of Personal Data, set up by Article 29 of Directive 95/46/EC of 24.10.1995, OJ L 281 of 23.11.1995, p. 31.

The creation of a legal basis for an unlimited access to the VIS, for Member State authorities responsible for internal security and to Europol, would mean that access would be granted to pursue any criminal offence, as defined by Member States themselves. This would transform the VIS into a regular crime fighting database, and could open the possibility for routine access by law enforcement authorities. However, this would not be in line with the main purpose of the original VIS and would unjustifiably impact on the fundamental rights of the individuals whose data are processed in the VIS and who are to be treated as innocent individuals and not as suspects in a criminal investigation.

The creation of a legal basis for a limited access to the VIS, for Member State authorities responsible for internal security and to Europol, would need a prohibition of routine access of authorities responsible for internal security, a de-central access to the VIS and a consultation which may only take place for specific purposes of the prevention, detection and investigation of clearly defined terrorist offences and of other serious criminal offences and limited to the extent the data are required for the performance of the tasks in accordance with these purposes. On top of that consultation would be limited to some basic VIS data; and only if further information is necessary under the specific circumstances of the case, additional relevant data could be consulted. As for the necessary specific safeguards, the Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters (2005/XX/JI), Regulation (EC) 45/2001 and the Europol Convention shall apply to the processing of personal data pursuant to this Decision. The Framework Decision requires Member States in particular to lay down effective, proportionate and dissuasive sanctions to be imposed in case of infringement of data protection provisions, including criminal sanctions for particularly serious and intentionally committed infringements. Effective supervision is foreseen through the establishment of a yearly review by the relevant Data Protection Supervisory authorities.

To make sure that the impact on fundamental rights of the individuals whose data are processed in the VIS by the access of internal security authorities to these data for consultation is in effect lessened and that technical implications remain at a low level, a Decision concerning the limited, case-by-case access for consultation to the Visa Information System (VIS) to authorities of Member States responsible for internal security and to Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences is the only satisfactory option.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **• Summary of the proposed action**

The objective of the present proposal is to provide the legal basis to allow for and to lay down the conditions under which Member States' authorities responsible for internal security and the European Police Office (Europol) may access the Visa Information System (VIS) for consultation for the purposes of the prevention, detection and investigation of terrorist offences and the types of crime and the offences in respect of which Europol is competent to act pursuant to Article 2 of the Europol Convention ("serious criminal offences").

#### **• Legal basis**

This Decision is based on Article 30 (1) (b) and Article 34 (2) (c) of the Treaty on European Union. In order to fulfil one of the objectives of the Union, namely to provide citizens with a high level of safety within an area of freedom, security and justice by preventing and

combating crime, organised or otherwise, in particular terrorism, through closer cooperation between police forces, customs authorities and other competent authorities in the Member States, both directly and through the European Police Office (Europol), Article 30 (1) (b) provides for the collection, storage, processing, analysis and exchange of relevant information, in particular through Europol, subject to appropriate provisions on the protection of personal data. The data processed in the VIS can be relevant information in specific cases to achieve those purposes.

- **Subsidiarity principle**

The subsidiarity principle applies to the actions by the Union.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason:

There is no legal base for such action: as the VIS is a database established under the competence of the Community, no individual Member State could authorise on its own the access to the VIS by law enforcement authorities. Furthermore, existing national visa databases, which could be accessed by specific cooperation regimes between competent authorities for the exchange of visa data between Member States established under Title VI of the Treaty on European Union, do not have the same categories of data as in the VIS and only allow for a direct information flow from one Member State to another Member State. The “principle of availability” as established in the Proposal for a Council Framework Decision on the exchange of information under the principle of availability excludes from its scope the access to the VIS and its data.

Union action will better achieve the objectives of the proposal for the following reasons:

The objectives of the Decision, to provide for the only admissible legal basis under European law to allow for and to lay down the conditions under which Member States' authorities responsible for internal security and the European Police Office (Europol) may access the Visa Information System (VIS) for consultation for the purposes of the prevention, detection and investigation of terrorist offences and other serious criminal offences, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the action, be better achieved at EU level.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

The present initiative does not go beyond what is necessary to achieve its objective: This Decision seeks to ensure full respect for the fundamental rights. It also restricts the conditions to the use of VIS data to specific cases only, thereby excluding routine access.

The consultation of the data is exclusively reserved to duly authorised staff of the competent authorities of each Member State, and of Europol officials. Access to the VIS may only take place for specific purposes as defined in this Decision and limited to the extent the data are required for the performance of the tasks in accordance with these purposes. Consultation is initially limited to some enumerated VIS data; only if further information is necessary under the specific circumstances of the case, additional relevant data may be consulted.

Financial implications may be minimized as this proposal allows limited further access to an already existing Information System. As to the further cost it is foreseen that each Member State and Europol shall set up and maintain at their expense the technical infrastructure necessary to implement this Decision, and be responsible for bearing the costs resulting from access to the VIS for the purposes of this Decision.

- **Choice of instruments**

Proposed instruments: A Decision based on Article 30(1)(b) and Article 34 (2) (c) TEU.

Other means would not be adequate for the following reason:

The form of a Decision has been chosen because it is necessary to adopt an act of general application which is binding on the Member States in its entirety.

- **Participation in this VIS Decision**

The VIS Regulation covers the exchange of data on short stay visas between Member States "which have abolished checks at their internal borders", based on Article 62 (2)(b)(ii) and Article 66 of the EC Treaty. This decision allows access to VIS data for the purposes of the prevention, detection and investigation of terrorist offences and the crimes and offences in respect of which Europol is competent to act, i.e. purposes which are not covered by the common visa policy.

However, this proposal governs the further use for a secondary purpose of data on short stay visas. Such data is Schengen data collected in the framework of the common visa policy. Creating further access rights to such data entails the necessity to protect such personal data within the meaning of Article 1, point F of Council Decision 1999/437/EC. Additionally, the Schengen acquis covers within the framework of police cooperation the assistance "for the purposes of preventing and detecting criminal offences" (Article 39 (1) Schengen Convention) and the exchange of information concerning "any information which may be important in helping it combat future crime and prevent offences against or threats to public policy and public security" (Article 46 (1) Schengen Convention). Therefore this decision constitutes a development of the Schengen acquis. The consequences for access to VIS data are as follows:

*United Kingdom and Ireland:*

As Ireland and the United Kingdom do not participate in the common visa policy and consequently are not Member States to which the VIS Regulation applies, authorities responsible for internal security of these Member States do not have direct access to the VIS for the purposes of this Decision. However it is appropriate that the VIS data is made available to the authorities responsible for internal security of the United Kingdom and Ireland.

*Iceland and Norway:*

The procedures laid down in the Association Agreement<sup>2</sup> concluded by the Council and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the

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<sup>2</sup> OJ L 176, 10.7.1999, p. 36.



implementation, application and development of the Schengen acquis are applicable, since the present proposal builds on the Schengen acquis as defined in Annex A of that Agreement.

*Switzerland:*

This Decision constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen acquis<sup>3</sup>, which fall within the area referred to in Article 4 (1) of the Council Decision 2004/849/EC<sup>4</sup> on the signing, on behalf of the European Union, and on the provisional application of certain provisions of that Agreement.

The Agreement with Switzerland, signed on 26.10.2004, provides for provisional application of certain provisions upon signature, in particular the participation of Switzerland in the Mixed Committee dealing with the development of the Schengen acquis.

#### **4. BUDGETARY IMPLICATIONS**

The proposal has implication for the Community budget insofar as the additional number of access to the VIS generated by the authorities responsible for internal security via the central access points has to be taken into account when setting up and maintaining the system. The implementation of the proposed Decision would entail only a small amount of additional administrative expenditure, to be charged to the budget of the European Communities, for meetings of and the secretarial services for the new committee set up referred to in Article 10 of this Decision.

#### **5. ADDITIONAL INFORMATION**

- **Review/revision/sunset clause**

The proposal includes a review clause.

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<sup>3</sup> Council document 13054/04.

<sup>4</sup> OJ L 368 of 15.12.2004, p. 26.

Proposal for a

## COUNCIL DECISION

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 30 (1) (b) and Article 34 (2) (c) thereof,

Having regard to the proposal from the Commission<sup>5</sup>,

Having regard to the opinion of the European Parliament<sup>6</sup>,

Whereas:

- (1) Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS)<sup>7</sup> established the VIS as a system for the exchange of visa data between Member States. The establishment of the VIS represents one of the key initiatives within the politics of the European Union in the area of Justice, Freedom and Security. One of the objectives of the VIS is to contribute towards improving the administration of the common visa policy and towards internal security and to combating terrorism.
- (2) During its meeting of 7 March 2005 the Council adopted conclusions stating that 'in order to achieve fully the aim of improving internal security and the fight against terrorism', Member State authorities responsible for internal security should be guaranteed access to the VIS, 'in the course of their duties in relation to the prevention, detection and investigation of criminal offences, including terrorist acts and threats', 'subject to strict compliance with the rules governing the protection of personal data'.<sup>8</sup>
- (3) It is essential in the fight against terrorism and other serious criminal offences for the relevant services to have the fullest and most up-to-date information in their respective fields. The Member States' competent national services need information if they are to perform their tasks. The information contained in the VIS may be important for the purposes of preventing and combating terrorism and serious crimes and should

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<sup>5</sup> OJ C , , p. .

<sup>6</sup> OJ C , , p. .

<sup>7</sup> OJ L 213, 15.6.2004, p. 5.

<sup>8</sup> Conclusions of the meeting Council Competitiveness 7.3.2005, doc. 6811/05.

therefore be available for consultation by the authorities responsible for internal security.

- (4) Moreover, the European Council has stated that Europol has a key role with respect to cooperation between Member States' authorities in the field of cross-border crime investigation in supporting Union-wide crime prevention, analyses and investigation. Consequently, Europol should also have access to VIS data within the framework of its tasks and in accordance with the Convention of 26 July 1995 on the Establishment of a European Police Office<sup>9</sup>.
- (5) This Decision complements the Regulation of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short stay-visas 2005/XX/EC<sup>10</sup> (hereinafter referred to as the "VIS Regulation") insofar as it provides for a legal base under Title VI of the Treaty on European Union authorizing the access to the VIS for authorities responsible for internal security and by Europol.
- (6) It is necessary to define the competent Member States' authorities responsible for internal security and the central access points, duly authorised staff of which are to have access for consultation to the VIS data for the specific purposes of the prevention, detection and investigation of terrorist offences and the types of crime and the offences in respect of which Europol is competent, to the extent necessary for the performance of their tasks.
- (7) For the purposes of protection of personal data, and in particular to exclude routine access, the processing of VIS data should only be in specific cases. The authorities responsible for internal security and Europol should thus only search data contained in the VIS on the basis of reasonable grounds and factual indications.
- (8) The effective monitoring of the application of this Decision should be evaluated at regular intervals.
- (9) Since the objectives of the action to be taken, namely the creation of obligations and conditions for access for consultation of VIS data by Member States' authorities responsible for internal security and by Europol cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale and effects of the action, be better achieved at the level of the European Union, the Council may adopt measures in accordance with the principle of subsidiarity, referred to in Article 2 of the Treaty on European Union and defined in Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, this Decision does not go beyond what is necessary in order to achieve those objectives.
- (10) In accordance with Article 47 of the Treaty on the European Union, this Framework Decision does not affect the competences of the European Community, in particular as exercised in the VIS Regulation and in Directive 95/46/EC of the European Parliament

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<sup>9</sup> OJ C 316, 27.11.1995, p. 2, as last amended by the Protocol, drawn up on the basis of Article 43(1) of the Convention on the establishment of a European Police Office (Europol), amending that Convention - OJ C 2, 6.1.2004, p. 3.

<sup>10</sup> OJ C, p

and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>11</sup>.

- (11) The United Kingdom is taking part in this Decision, in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the EU Treaty and to the EC Treaty, and Article 8 (2) of Council Decision 2000/365/EC of 29 May 2000, concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis<sup>12</sup>.
- (12) Ireland is taking part in this Decision in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the EU Treaty and to the EC Treaty, and Article 6 (2) of Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis<sup>13</sup>.
- (13) As the United Kingdom and Ireland do not participate in the common visa policy and consequently are not Member States to which the VIS Regulation applies, authorities responsible for internal security of these Member States do not have direct access to the VIS for the purposes of this Decision. However, it is appropriate that visa information is exchanged also with the authorities responsible for internal security in the United Kingdom and Ireland. By this Decision, Member States to which the VIS Regulation applies agree that VIS data can be made available by any of them to the authorities responsible for internal security in the United Kingdom and Ireland.
- (14) As regards Iceland and Norway, this Decision constitutes a development of provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis<sup>14</sup>, which fall within the area referred to in Article 1, point F of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis<sup>15</sup>.
- (15) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 1, point F of Council Decision 1999/437/EC of 17 May 1999 read in conjunction with Article 4 (1) of the Council Decision 2004/849/EC on the signing, on behalf of the

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<sup>11</sup> OJ L 281, 23.11.1995, p. 31.

<sup>12</sup> OJ L 131, 1.6.2000, p. 43.

<sup>13</sup> OJ L 64, 7.3.2002, p. 20.

<sup>14</sup> OJ L 176, 10.7.1999, p. 36.

<sup>15</sup> OJ L 176, 10.7.1999, p. 31.

European Union, and on the provisional application of certain provisions of that Agreement<sup>16</sup>.

- (16) This Decision respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

HAS DECIDED AS FOLLOWS:

*Article 1*

**Subject matter and scope**

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

*Article 2*

**Definitions**

1. For the purposes of this Decision, the following definitions shall apply:
  - (a) 'Visa Information System (VIS)' means the Visa Information System as established by Council Decision 2004/512/EC;
  - (b) 'Europol' means the European Police Office as established by the Convention of 26 July 1995 on the Establishment of a European Police Office ("the Europol Convention");
  - (c) 'terrorist offences' means the offences under national law which correspond or are equivalent to the offences in Articles 1 to 4 of Council Framework Decision 2002/475/JHA on combating terrorism<sup>17</sup>;
  - (d) 'serious criminal offences' means the forms of crime referred to in Article 2 of the Europol Convention and the Annex thereto;
  - (e) 'authorities responsible for internal security' means those authorities of the Member States which are responsible for the prevention, detection or investigation of terrorist offences or of other serious criminal offences.
2. The definitions in the VIS Regulation shall also apply.

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<sup>16</sup> OJ L 368, 15.12.2004, p. 26.

<sup>17</sup> OJ L 164, 22.6.2002, p.3.

### Article 3

#### **Authorities responsible for internal security**

1. The authorities responsible for internal security which are authorised in each Member State to access VIS data pursuant to this Decision shall be as set out in the Annex.
2. Amendments to the Annex shall be made in accordance with the procedure set out in Article 11.

The Commission shall publish the amendments in the *Official Journal of the European Union*.

### Article 4

#### **Central access points to the VIS**

1. Each Member State to which the VIS Regulation applies shall designate a single national authority as the central access point and shall designate a specialised unit therein comprising officials duly empowered to access the VIS for consultation for the purposes of this Decision. The central access points shall be as set out in the Annex.
2. Amendments to the Annex shall be made in accordance with the procedure set out in Article 11.

The Commission shall publish such amendments in the *Official Journal of the European Union*.

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

### Article 5

#### **Conditions for access to VIS data by authorities responsible for internal security of Member States to which the VIS Regulation applies**

1. Access to the VIS for consultation by authorities responsible for internal security shall take place within the scope of their powers and if the following conditions are satisfied:
  - (a) a duly reasoned written or electronic request must be submitted to the central access point;
  - (b) access for consultation must be necessary for the purpose of the prevention, detection or investigation of terrorist offences or other serious criminal offences;

- (c) access for consultation must be necessary in a specific case; a specific case exists in particular when the access for consultation is connected to a specific event determined by date and place, or to an imminent danger associated with crime, or to a specific person in respect of whom there are serious grounds for believing that he or she will commit terrorist offences or serious criminal offences or that he or she has a relevant connection with such a person;
  - (d) if there are reasonable grounds, based on factual indications, to consider that consultation of VIS data will contribute to the prevention, detection or investigation of any of the criminal offences in question;
2. Access to the VIS for consultation shall be limited to searching with the following VIS data in the application file:
- (a) surname, surname at birth (earlier surname(s)); first names; sex; date, place and country of birth;
  - (b) current nationality of the applicant;
  - (c) type and number of the travel document, the authority which issued it and the date of issue and of expiry;
  - (d) main destination and duration of the intended stay;
  - (e) purpose of travel;
  - (f) date of arrival and departure;
  - (g) border of first entry or transit route;
  - (h) residence;
  - (i) photographs;
  - (j) fingerprints;
  - (k) type of visa and the number of the visa sticker.
3. If the first consultation of the data listed in paragraph 2 shows that any of those data are recorded in the VIS, and if further information is necessary in the specific circumstances of the case, the authorities responsible for internal security shall have access to consult the following additional data contained in the application file, as well as in linked application file(s):
- (a) any other data taken from the application form;
  - (b) the data entered in respect of any visa issued, refused, annulled, revoked or extended.

## *Article 6*

### **Conditions for access to VIS data by authorities responsible for internal security of Member States to which the VIS Regulation does not apply**

1. Access to the VIS for consultation by authorities responsible for internal security of a Member State to which the VIS Regulation does not apply shall take place within the scope of their powers and
  - (a) subject to the same conditions as referred to in Article 5 (1) (b) to (d); and
  - (b) by a duly motivated written or electronic request to an authority responsible for internal security of a Member State to which the VIS Regulation applies; that authority shall then request its national central access point to consult the VIS.
2. Member States to which the VIS Regulation does not apply shall make their visa information available to Member States to which the VIS Regulation applies, on the basis of a duly reasoned written or electronic request, subject to compliance with the conditions laid down in Article 5 (1) (b) to (d).

## *Article 7*

### **Conditions for access to VIS data by Europol**

1. Access to the VIS for consultation by Europol shall take place within the limits of its mandate and
  - (a) when necessary for the performance of its tasks pursuant to Article 3(1), point 2 of the Europol Convention and for the purposes of a specific analysis as referred to in Article 10 of the Europol Convention ; or
  - (b) when necessary for the performance of its tasks pursuant to Article 3(1), point 2 of the Europol Convention and for an analysis of a general nature and of a strategic type, as referred to in Article 10 of the Europol Convention, provided that VIS data is rendered anonymous by Europol prior to such processing and retained in a form in which identification of the data subjects is no longer possible.
2. Article 5 (2) and (3) of this Decision apply accordingly.
3. Europol shall designate a specialised unit for the purpose of this Decision with duly empowered Europol officials to act as the central access point to access the VIS for consultation.
4. Processing of information obtained by Europol from access to the VIS shall be subject to the consent of the Member State which has entered that data in the VIS. Such consent shall be obtained via the Europol national unit of that Member State.



## Article 8

### Protection of personal data

1. The Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters (2005/XX/JI) shall apply to the processing of personal data pursuant to this Decision. The processing of personal data shall be supervised by the independent national Data Protection Supervisory authority or authorities as provided for in Article 30 of that Council Framework Decision.
2. The processing of personal data by Europol pursuant to this Decision shall be in accordance with the Europol Convention and supervised by the independent joint supervisory body established by Article 24 of the Convention.
3. The processing of personal data by the European Commission pursuant to this Decision shall be in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>18</sup> and be supervised by the European Data Protection Supervisor as provided for in Article 41 of that Regulation.
4. The Working Party on the Protection of Individuals with regard to the Processing of Personal Data for the purpose of the prevention, investigation, detection and prosecution of criminal offences established by Article 31 of Council Framework Decision 2005/XX/JI on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters shall also carry out the tasks laid down in Article 32 of that Framework Decision with regard to matters covered by this Decision.
5. The transfer of personal data obtained from accessing the VIS by authorities responsible for internal security and by Europol shall be prohibited, except where the data is transmitted to competent authorities responsible for internal security of Member States, under the conditions and for the purposes of Articles 5 and 6 and in full accordance with the applicable rules on the protection of personal data as referred to in this Article.
6. The competent Data Protection Supervisory authority or authorities shall investigate the lawfulness of the processing of personal data pursuant to this Decision at least once a year. The resulting reports shall be made public.
7. Member States, the Commission and Europol shall provide to the competent Data Protection Supervisory authority or authorities the necessary information to enable them to carry out their tasks in accordance with this article.

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<sup>18</sup> OJ L 8, 12.1.2001, p.1.

## *Article 9*

### **Costs**

Each Member State and Europol shall set up and maintain at their expense, the technical infrastructure necessary to implement this Decision, and be responsible for bearing the costs resulting from access to the VIS for the purposes of this Decision.

## *Article 10*

### **Keeping of records**

1. Each Member State, Europol, and the Commission as the responsible body for establishing and operating the Central Visa Information System shall keep records of all data processing operations resulting from access to the VIS for consultation pursuant to this Decision. Those records shall show the exact purpose of the access for consultation, the date and time of access, the data used for consultation and the type of data consulted, and the name of the authority accessing and consulting the data. In addition, each Member State and Europol shall keep records of the persons responsible for consulting the data.
2. Such records containing personal data may be used only for the data protection monitoring of the legality of data processing as well as to ensure data security. Only such records containing data of a non-personal nature may be used for the monitoring and evaluation referred to in Article 12.
3. These records shall be protected by appropriate measures against unauthorised access and abuse and deleted after a period of one year after the five year retention period referred to in Article 20 (1) of the VIS Regulation has expired, unless they are required for monitoring procedures which have already begun.

## *Article 11*

### **Advisory Committee**

1. Where reference is made to this Article, the Commission shall be assisted by a advisory Committee composed of the representatives of the Member States and chaired by the representative of the Commission.
2. The Committee shall adopt its rules of procedure on a proposal made by the Chair on the basis of standard rules of procedure which have been published in the *Official Journal of the European Union*. Each Member State shall designate one representative.

3. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft, if necessary by taking a vote, within a time-limit to be laid down by the Chair according to the urgency of the matter. The Chair shall not vote.
4. The opinion shall be recorded in the minutes. Each Member State shall have the right to ask to have its position recorded in the minutes.
5. The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which the opinion has been taken into account.

#### *Article 12*

#### **Monitoring and evaluation**

1. The Commission shall ensure that systems are in place to monitor the functioning of the VIS pursuant to this Decision against objectives, in terms of outputs, cost-effectiveness and quality of service.
2. Two years after the VIS starts operations and every two years hereafter, the Commission shall submit a report to the European Parliament and to the Council on the technical functioning of the VIS pursuant to this Decision. That report shall include information on the performance of the VIS against quantitative indicators predefined by the Commission.
3. Four years after the VIS starts operating and every four years thereafter, the Commission shall produce an overall evaluation of the VIS pursuant to this Decision. This evaluation shall include an examination of the results achieved against objectives and an assessment of the continuing validity of the underlying rationale behind this Decision and any implications for future operations. The Commission shall submit the evaluation reports to the European Parliament and the Council.
4. The Member States and Europol shall provide to the Commission the necessary information to enable them to carry out its tasks in accordance with this article.

#### *Article 13*

#### **Entry into force and date of application**

1. This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

2. This Decision shall apply from the date to be determined by the Commission once the following conditions are met:
- (a) the VIS Regulation has entered into force and is applicable;
  - (b) the Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters (2005/XX/JI) has entered into force.

The Commission shall publish that date in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council*  
*The President*

## ANNEX

### **Part I. List of authorities responsible for the internal security having access to the VIS for the purposes of this Decision as required by Article 3**

1. Member State
  - Authority responsible for the internal security:

### **Part II. List of central access point having access to the VIS for the purposes of this Decision as required by Article 4**

(only applicable for Member States to which the VIS Regulation applies)

1. Member State
  - Central access point

## LEGISLATIVE FINANCIAL STATEMENT

*This document is intended to accompany and complement the Explanatory Memorandum. As such, when completing this Legislative Financial Statement, and without prejudice to its legibility, an attempt should be made to avoid repeating information contained in the Explanatory Memorandum. Before filling in this template, please refer to the specific Guidelines that have been drafted to provide guidance and clarification for the items below.*

### 1. NAME OF THE PROPOSAL

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

### 2. ABM / ABB FRAMEWORK

*Policy Area(s) concerned and associated Activity/Activities:*

*Justice and Home Affairs; 1806 – Establishing a genuine area of freedom, security and justice in criminal and civil matters*

### 3. BUDGET LINES

3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- B.A lines)) including headings:  
N.A.

3.2. Duration of the action and of the financial impact:  
From 2006

3.3. Budgetary characteristics (*add rows if necessary*): N.A.

Budget line	Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
	Comp/ Non-comp	Diff <sup>19</sup> / Non-diff <sup>20</sup>				
			YES/ NO	YES/NO	YES/NO	No

<sup>19</sup> Differentiated appropriations

<sup>20</sup> Non-differentiated appropriations hereafter referred to as NDA

	Comp/ Non- comp	Diff/ Non- diff	YES/ NO	YES/NO	YES/NO	No
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#### 4. SUMMARY OF RESOURCES

##### 4.1. Financial Resources

##### 4.2. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Expenditure type	Section no.		2006	2007	2008	2009	2010	2011 and later	Total
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##### Operational expenditure<sup>21</sup>

Commitment Appropriations (CA)	8.1	a							
Payment Appropriations (PA)		b							

##### Administrative expenditure within reference amount<sup>22</sup>

Technical & administrative assistance (NDA)	8.2.4	c							
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##### TOTAL REFERENCE AMOUNT

Commitment Appropriations		a+c							
Payment Appropriations		b+c							

##### Administrative expenditure not included in reference amount<sup>23</sup>

Human resources and associated expenditure (NDA)	8.2.5	d	189.000	189.000	189.000	189.000	189.000	189.000	1.134.000
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6	e	41.000	41.000	41.000	41.000	41.000	41.000	246.000

<sup>21</sup> Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.

<sup>22</sup> Expenditure within article xx 01 04 of Title xx.

<sup>23</sup> Expenditure within chapter xx 01 other than articles xx 01 04 or xx 01 05.

### Total indicative financial cost of intervention

<b>TOTAL CA including cost of Human Resources</b>	a+c +d+ e	230.440	230.440	230.440	230.440	230.440	230.440	230.440	1.382.640
<b>TOTAL PA including cost of Human Resources</b>	b+c +d+ e	230.440	230.440	230.440	230.440	230.440	230.440	230.440	1.382.640

### Co-financing details

If the proposal involves co-financing by Member States, or other bodies (please specify which), an estimate of the level of this co-financing should be indicated in the table below (additional lines may be added if different bodies are foreseen for the provision of the co-financing):

*EUR million (to 3 decimal places)*

Co-financing body		Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and later	Total
.....	f							
<b>TOTAL CA including co-financing</b>	a+c +d+ e+f							

#### 4.2.1. Compatibility with Financial Programming

- Proposal is compatible with existing financial programming.
- Proposal will entail reprogramming of the relevant heading in the financial perspective.
- Proposal may require application of the provisions of the Interinstitutional Agreement<sup>24</sup> (i.e. flexibility instrument or revision of the financial perspective).

#### 4.2.2. Financial impact on Revenue

- Proposal has no financial implications on revenue

<sup>24</sup> See points 19 and 24 of the Interinstitutional agreement.



- Proposal has financial impact – the effect on revenue is as follows:

**NB: All details and observations relating to the method of calculating the effect on revenue should be shown in a separate annex.**

EUR million (to one decimal place)

Budget line	Revenue	Prior to action [Year n-1]	Situation following action					
			[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5] <sup>25</sup>
	a) Revenue in absolute terms							
	b) Change in revenue	Δ						

*(Please specify each revenue budget line involved, adding the appropriate number of rows to the table if there is an effect on more than one budget line.)*

- 4.3. Human Resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.

Annual requirements	2006	2007	2008	2009	2010	2011 and later
Total number of human resources	1,75	1,75	1,75	1,75	1,75	1,75

## 5. CHARACTERISTICS AND OBJECTIVES

Details of the context of the proposal are required in the Explanatory Memorandum. This section of the Legislative Financial Statement should include the following specific complementary information:

- 5.1. Need to be met in the short or long term
- 5.2. At EU level a Advisory Committee needs to be established after adoption of the Decision to update in the Annex the relevant authorities and central access points of each Member State who are authorized to have access to the VIS system whenever there are changes in the future.
- 5.3. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy

<sup>25</sup> Additional columns should be added if necessary i.e. if the duration of the action exceeds 6 years

5.4. Community involvement is necessary in order to keep the list of authorities authorized to access the VIS up-dated on a European level. Information is to be provided by Member States and will be published in the Official Journal.

5.5. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

The objective is to contribute to establishing a genuine area of freedom, security and justice in criminal and civil matters by specifying and keeping up-to-date the third pillar authorities which are authorized to have access to the VIS to ensure legal clarity for the citizens and to facilitate the tasks of the Data Protection Supervisory Authorities.

5.6. Method of Implementation (indicative)

Show below the method(s)<sup>26</sup> chosen for the implementation of the action.

í ***Centralised Management***

í Directly by the Commission

í Indirectly by delegation to:

í Executive Agencies

í Bodies set up by the Communities as referred to in art. 185 of the Financial Regulation

í National public-sector bodies/bodies with public-service mission

í ***Shared or decentralised management***

í With Member states

í With Third countries

í ***Joint management with international organisations (please specify)***

Relevant comments:

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<sup>26</sup> If more than one method is indicated please provide additional details in the "Relevant comments" section of this point

**6. MONITORING AND EVALUATION**

6.1. Monitoring system

6.2. Evaluation

6.2.1. Ex-ante evaluation

6.2.2. Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past)

6.2.3. Terms and frequency of future evaluation

**7. ANTI-FRAUD MEASURES**

## 8. DETAILS OF RESOURCES

8.1. Objectives of the proposal in terms of their financial cost

*Commitment appropriations in EUR million (to 3 decimal places)*

(Headings of Objectives, actions and outputs should be provided)	Type of output	Av. cost	Year n		Year n+1		Year n+2		Year n+3		Year n+4		Year n+5 and later		TOTAL	
			No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost
OPERATIONAL OBJECTIVE No.1 <sup>27</sup> .....																
Action 1																
- Output 1																
- Output 2																
Action 2																
- Output 1																
Sub-total Objective 1																
OPERATIONAL OBJECTIVE No.2 <sup>1</sup>																
Action 1																
- Output 1																
Sub-total Objective 2																
OPERATIONAL OBJECTIVE No.n <sup>1</sup>																

27

As described under Section 5.3



## 8.2. Administrative Expenditure

The impact on staff and administrative expenditure will be covered in the context of allocation of resources of the lead DG in the context of the annual allocation procedure.

The allocation of posts also depends on the attribution of functions and resources in the context of the financial perspectives 2007-2013.

### 8.2.1. Number and type of human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources (number of posts/FTEs)					
		2006	2007	2008	2009	2010	2011
Officials or temporary staff <sup>28</sup> (XX 01 01)	A*/AD	0,25	0,25	0,25	0,25	0,25	0,25
	B*, C*/AST	1,5	1,5	1,5	1,5	1,5	1,5
Staff financed <sup>29</sup> by art. XX 01 02							
Other staff <sup>30</sup> financed by art. XX 01 04/05							
<b>TOTAL</b>		<b>1,75</b>	<b>1,75</b>	<b>1,75</b>	<b>1,75</b>	<b>1,75</b>	<b>1,75</b>

### 8.2.2. Description of tasks deriving from the action

The staff will have to providing the secretarial support, including communication and prepare the meetings of the committee.

### 8.2.3. Sources of human resources (statutory)

*(When more than one source is stated, please indicate the number of posts originating from each of the sources)*

- Posts currently allocated to the management of the programme to be replaced or extended

<sup>28</sup> Cost of which is NOT covered by the reference amount

<sup>29</sup> Cost of which is NOT covered by the reference amount

<sup>30</sup> Cost of which is included within the reference amount

- Posts pre-allocated within the APS/PDB exercise for year n
  - Posts to be requested in the next APS/PDB procedure
  - Posts to be redeployed using existing resources within the managing service (internal redeployment)
  - Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

8.2.4. Other Administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)

EUR million (to 3 decimal places)

Budget line (number and heading)	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
<b>1 Technical and administrative assistance (including related staff costs)</b>							
Executive agencies <sup>31</sup>							
Other technical and administrative assistance							
- <i>intra muros</i>							
<i>extra muros</i>							
<b>Total Technical and administrative assistance</b>							

<sup>31</sup> Reference should be made to the specific legislative financial statement for the Executive Agency(ics) concerned.

8.2.5. Financial cost of human resources and associated costs not included in the reference amount

*EUR million (to 3 decimal places)*

Type of human resources	2006	2007	2008	2009	2010	2011 and later
Officials and temporary staff (XX 01 01)	189.000	189.000	189.000	189.000	189.000	189.000
Staff financed by Art XX 01 02 (auxiliary, END, contract staff, etc.)  (specify budget line)						
<b>Total cost of Human Resources and associated costs (NOT in reference amount)</b>	189.000	189.000	189.000	189.000	189.000	189.000

Calculation– *Officials and Temporary agents*

*Reference should be made to Point 8.2.1, if applicable*

Staffing:  $1 \times 108.000, 0,5 \times 108.000, 0,25 \times 108.000 = 189.000$

Calculation– *Staff financed under art. XX 01 02*

*Reference should be made to Point 8.2.1, if applicable*



8.2.6. Other administrative expenditure not included in reference amount

EUR million (to 3 decimal places)

	2006	2007	2008	2009	2010	2011 and later	TOTAL
XX 01 02 11 01 – Missions							
XX 01 02 11 02 – Meetings & Conferences	41.440	41.440	41.440	41.440	41.440	41.440	248.640
XX 01 02 11 03 – Committees <sup>32</sup>							
XX 01 02 11 04 – Studies & consultations							
XX 01 02 11 05 - Information systems							
<b>2 Total Other Management Expenditure (XX 01 02 11)</b>							
<b>3 Other expenditure of an administrative nature</b> (specify including reference to budget line)							
<b>Total Administrative expenditure, other than human resources and associated costs (NOT included in reference amount)</b>	41.440	41.440	41.440	41.440	41.440	41.440	248.640

Calculation - *Other administrative expenditure not included in reference amount*

2 meetings X 28 (One participant per Member State and per State to which the VIS Regulation applies [Iceland, Norway, Switzerland]) X 740€ per annum

<sup>32</sup> Specify the type of committee and the group to which it belongs.