

MINISTRY OF FOREIGN AFFAIRS

MINISTRY OF THE INTERIOR

**PROVISIONS CONCERNING THE VISA INFORMATION SYSTEM (VIS) AND THE EXCHANGE OF DATA
BETWEEN MEMBER STATES**

THE MINISTRY OF FOREIGN AFFAIRS

AND

THE MINISTRY OF THE INTERIOR

Having regard to the EU Council's Decision No. 2004/512/EC dated 8 June 2004, establishing the Visa Information System (hereinafter the "VIS"), published on 15 June 2004 in the Official Journal of the European Union;

Having regard to the Presidential Decree No. 242 dated 27 July 2004 concerning the Regulation for the rationalization and the interconnection of communications in the Italian public sector in the field of immigration;

Having regard to the EU Council's Decision No. 2008/633/JHA of 23 June 2008, concerning access for the consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences, hereinafter the "Decision", published on 13 June 2008 in the Official Journal of the European Union;

Having regard to the Regulation of the European Parliament and of the Council No. 767/2008 of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short stay visas (VIS Regulation), hereinafter the "Regulation", published on 13 August 2008 in the Official Journal of the European Union;

Having regard to the Commission's Decision No. 2008/602/EC dated 17 June 2008, establishing the physical architecture and the requirements of the national interfaces and communication infrastructures between the Central Visa Information System and the national interfaces in development, published on 23 July 2008 in the Official Journal of the European Union;

Having regard to the Regulation of the European Parliament and the Council No. 810/2009 dated 13 July 2009 establishing a Community code for visas (Visa Code), published on 15 September 2009 in the Official Journal of the European Union;

Having regard to the Regulation of the European Parliament and the Council No. 81/2009 dated 14 January 2009, which modifies the regulation No. 562/2006 on the use of the visa

information system (VIS) under the Schengen Borders Code, published on 4 February 2009 in the Official Journal of the European Union;

Having regard to the Legislative Decree No. 196 dated 30 June 2003 regarding the Italian Personal Data Protection Code;

Whereas it is necessary, in order to implement the above provisions of the European Union, to determine the allocation of tasks between the two Ministries regarding the VIS;

DECREE

Article 1

Designated Authorities

1. The Ministry of Foreign Affairs and the Ministry of the Interior shall be the designated Authorities accessing the VIS for the purposes referred to in Article 2 of the Regulation.
2. The staff in charge of the Ministry of Foreign Affairs shall access the VIS for purposes related to the issue, extension, annulment, revocation or refusal of entry visas in the territory of the States that apply the Schengen Convention.

Access to VIS shall be permitted to the staff of the National Police and of the other Police forces either in service at the border crossing points or empowered to discharge border police functions for the purposes of the activities indicated in Article 35 of Visa Code as well as for the purposes of checking external border crossing points, carrying out checks within the [national] territory as part of the tasks conferred on them, and for identification purposes in line with Articles 18, 19 and 20 of the Regulation. Access to VIS shall be also permitted in the course of discharging the relevant tasks to the staff of the Ministry of Interior in charge of determining responsibility for asylum applications and examining asylum applications in accordance with the mechanisms, limitations and formalities provided for in Articles 21 and 22 of the Regulation.

4. The staff referred to in paragraphs 2 and 3 above, duly authorized, shall carry out the operations envisaged in Article 6 of the Regulation within their respective powers and in accordance with the modalities specified therein.

5. In discharging the functions mentioned in this Decree, the authorities concerned shall ensure full compliance with article 7 of the Regulation, possibly by imposing specific sanctions as well as through the adoption of specific instructions for the personnel authorized to access pursuant to, in particular, Article 28, paragraph 5 of the Regulation.

Article 2

Designated Authorities for Access for the Purposes of Prevention, Detection and Investigation of Terrorist Offenses and Other Serious Crimes

1. The Ministry of the Interior shall be the sole Authority responsible for the implementation of the Decision on access to the VIS for the purpose of prevention, detection and investigation of terrorist offenses and other serious crimes as mentioned in the Preamble. For this purpose it shall determine the central access point/s as well as the designated authorities enabled to have access. Police authorities may access the VIS through the central access point/s in accordance with the procedures and the limitations set forth in Articles 3 and 4 and for the purposes of Article 5 paragraph 1 of the Decision.

2. Access to VIS shall be permitted for the prevention, detection and investigation of the criminal offenses mentioned in Article 2, letters c) and d) of the Decision.

Article 3

Access for Purposes Relating to the Issue of Visas

1. The Ministry of Foreign Affairs shall access the VIS for all purposes related to the examination of visa applications lodged abroad and the adoption of decisions to grant, refuse, annul, revoke or extend such visas.
2. The Ministry of the Interior shall access the VIS for the purposes relating to examination of the visa applications lodged at border crossing points pursuant to Article 35 of the Visa Code, including the issue of visas to seamen in transit, and the adoption of the relevant decisions.
3. For the above purposes the aforementioned Ministries shall perform all the operations mentioned in Article 6 of the Regulation as well as those described in greater detail in Articles 8 to 15 of that Regulation.
4. Access shall be reserved exclusively for duly authorized staff, also in the light of the provisions made by the Visa Code.
5. In no case shall external service providers (ESP) - where operating and authorized by the Ministry of Foreign Affairs to collect data and entry visa applications - be allowed to access the VIS, in accordance with Article 43 of the Visa Code.

Article 4

Verifications and Checks at Schengen External Border Crossing Points

1. For the sole purpose of verifying the identity of the visa holder and/or the authenticity of the visa and/or whether the conditions for entry to the territory are fulfilled, the authorities competent for carrying out checks at Schengen external border crossing points in accordance with Article 1, paragraph 3, shall be authorized to access search using the visa sticker number in combination with verification of the fingerprints of the visa holder, in accordance with Art. 18 of the Regulation.
2. The above authorities shall be also authorized to have access to search using the fingerprints of the visa holder or any other mechanisms as per Article 20 of the Regulation, solely for the purpose of the identification of any person who may not, or may no longer, fulfill the conditions for the entry to, stay or residence on the national territory.
3. Access shall be reserved exclusively for duly authorized staff.

Article 5

Verifications and Checks within the State's Territory

1. For the sole purpose of verifying the identity of the visa holder and/or the authenticity of the visa and/or whether the conditions of entry to, stay or residence on the territory are fulfilled, the police shall be authorized to have access to search, within the respective scope of competence, using the visa sticker number in combination with verification of the fingerprints of the visa holder, in accordance with Art. 19 of the Regulation.

2. The staff from the police as per the above paragraph shall be also authorized to search the VIS using the fingerprints of the visa holder or any other mechanisms as per Article 20 of the Regulation, for the sole purpose of the identification of any person who may not, or may no longer, fulfill the conditions for the entry to, stay or residence on the national territory.
3. Access shall be reserved exclusively for duly authorized staff.

Article 6

Access to Data for Determining the Responsibility for and for Examining Asylum Applications

1. The office of the Ministry of the Interior that is competent for asylum applications shall also be authorized to have access to search using the fingerprints of the asylum applicant for the purpose of determining the Member State responsible for examining the asylum application according to Article 21 as well as for the purpose of examining such an application according to Article 22 of the Regulation.

Article 7

Other Activities

1. The exchange of information between central Authorities in accordance with Article 16, paragraph 1, of the Regulation, as well as the other exchanges referred to in Art. 16, paragraph 3, to be carried out according to the procedures provided for in paragraph 2 and with the guarantees referred to in paragraph 4 of that Article, as well as the communications relating to the activities required by Articles 24 and 25 of the Regulation, shall be carried out by the Ministry of Foreign Affairs which shall duly inform the Ministry of the Interior whenever the latter is concerned. The Ministry of the Interior shall cooperate in managing the information processes it is involved in by timely providing the Ministry of Foreign Affairs with the requested data in accordance with the formats and procedures established by the VIS.
2. Both Ministries shall have independent access to VIS to obtain statistical information according to Article 17 of the Regulation.
3. They shall also make available, in accordance with the arrangements determined by the relevant EU institutions, the data required for monitoring the functioning of the VIS within the respective scope of competence as set out in this Decree.
4. Finally, the Ministry of the Interior shall undertake to inform the Ministry of Foreign Affairs without delay on any changes in its structure and organization that must be notified promptly by the Ministry of Foreign Affairs to the Commission pursuant to Article 3 of the Decision and Article 6 of the Regulation.

Article 8

Responsibilities and Competences Regarding Connections

1. Except where provided otherwise by this Decree, the authorities mentioned in Article 1 shall independently fulfill all the obligations imposed on Member States by the Regulation, within the respective scope of competence, specifically those set forth in Articles 28,

- paragraphs 3, 4, and 5, 29, paragraph 1, 30 and 32 of Chapter V of the Regulation regarding operation of the VIS.
2. Each of the Authorities under Article 1 shall be responsible for the implementation, on their Information Systems, of all the technical procedures necessary to allow the connection of Member States with the VIS.
 3. The Ministry of Foreign Affairs shall coordinate access to the VIS by such Authorities, where necessary, through the issue of specific technical requirements and the implementation of appropriate automated procedures that allow limiting use to the cases where it is necessary, adequate and proportionate to the discharge of their respective tasks.
 4. The national Authority according to Article 28, paragraph 2, of the Regulation shall be the Ministry of Foreign Affairs. For this purpose, it shall take care of the hosting, on the national territory, of both the national interface and the national back-up interface along with their connection to the Public System for Connectivity, through which they shall be made available to the parties entitled to access under this decree.
 5. Records of all data processing operations within the VIS according to Article 34 of the Regulation shall be kept by the Ministry of Foreign Affairs. Access to the said records by the Garante per la protezione dei dati personali (the Italian data protection authority) shall be ensured in all cases, for the purposes of Article 34, paragraph 2, of the Regulation, according to Article 153 of Legislative Decree No. 196 of 30 June 2003.
 6. The records of the staff duly authorized to enter or retrieve data as referred to in the said Article 34 shall be kept by the individual Authorities entitled to access the VIS; they shall only be used for the monitoring of the admissibility of data processing as well as to ensure the security of such data. The records shall be protected by appropriate measures against unauthorized access and deleted in the manner referred to in paragraph 2 of Article 34.

Article 9

Data Processing

1. Under legislative decree No. 196 of 30 June 2003, the Ministry of Foreign Affairs and the Ministry of the Interior shall be the controllers of the processing of personal data as per Article 5 of the Regulation, each in respect of the activities falling under their scope of competence in accordance with the law as referred to in Articles 2, 3, 4, 5, 6 and 7 [hereof]. They shall be the Authorities mentioned in Article 41, paragraph 4 of the Regulation. Information on data processing and procedures shall be provided to the data subject pursuant to Article 13 of Legislative Decree No. 196 of 30 June 2003. The information shall include the items specified in Article 37 of the Regulation; it shall be provided in the form and manner set out in that Article.
2. The said Ministries, each for the data pertaining to them, shall receive the requests aimed at the exercise of data subjects' rights according to Article 7 of Legislative Decree No. 196 of 30 June 2003 and Article 38 of the Regulation.
3. Advance data deletion in the event that a VIS applicant has acquired the nationality of a Member State and data rectification in the cases referred to in Articles 24 and 25, paragraph 3, of the Regulation, shall be the responsibility of the Authority that entered the data in question.
4. The Authorities referred to in paragraph 1 undertake not to transfer or otherwise make available the data processed in the VIS to third countries or international organizations,

except in the form and manner prescribed by paragraph 2 of Article 31 of the Regulations and subject to the safeguards referred to in paragraph 3 of that article.

5. The personal data from the VIS may not be stored in national files, except where necessary in specific cases according to Article 30 of the Regulation. In this case, the data may not be kept for longer than is strictly necessary.
6. The National Supervisory Authority in accordance with Article 41, paragraph 1 and for the purposes of Article 35 of the Regulation shall be the Garante per la protezione dei dati personali as per Article 153 of Legislative Decree No. 196 of 30 June 2003.

Article 10

Exchange of Information on the Acquisition of Nationality

1. Without prejudice to Article 9, paragraph 3 [hereof], the Authorities referred to in Article 1, paragraph 1 of this Decree shall collaborate to timely exchange the necessary information on the acquisition of nationality by non-EU nationals whose data are present in the VIS in order to ensure compliance with the requirements of Article 25, paragraph 1 and 2 of the Regulation.

Article 11

Final Provisions

1. As of the date this instrument is undersigned, an ad-hoc working group under the guidance and coordination of the Ministry of Foreign Affairs, being the central Authority on visa matters, shall assess the implementation of this Decree, monitor the operation of the system and propose any corrective measures.
2. For this purpose, the Ministry of the Interior shall notify the Ministry of Foreign Affairs of the names of its senior officials designated to participate in the said working group within 30 days of the the entry into force of this decree.
3. The working group shall be convened as a rule every six months by the Ministry of Foreign Affairs and may be convened for an extraordinary session at the request of any one of its members.

The Minister of Foreign Affairs

(signed)

The Minister of the Interior

(signed)