

V I S S C G

**Visa Information System Supervision
Coordination Group**



Activity Report 2017-2018

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1. Introduction and background

The Visa Information System ('VIS') is a system for the exchange of visa data between Member States created by Council Decision 2004/512/EC of 8 June 2004¹ as completed by Regulation 2008/767/EC of 9 July 2008² ('VIS Regulation').

As stated in Article 2 of the VIS Regulation, the purpose of the VIS is to facilitate the visa application procedure, prevent visa shopping and fraud, facilitate border checks as well as identity checks within the territory of the Member States and to contribute to the prevention of threats to the internal security of the Member States. To this end, the VIS provides a central repository of data on all short-stay Schengen visas. This data can be accessed by authorities issuing visas, e.g. consulates of Member States (Article 15), by checkpoints at the Schengen border to verify the identity of visa holders (Article 18), as well as for the purpose of identifying third-country nationals apprehended within the Schengen Area with fraudulent or without documents (Article 19).

The VIS Regulation sets out which data shall be included in the database at the various stages of processing a visa (application, issuing, discontinuation of examination, refusal, annulment/revocation, extension; Articles 9-14). Apart from data on the visa application (such as planned travel itinerary, inviting persons, etc.), it also includes a photograph of the applicant and fingerprints (Article 9 (5) and (6)).

In specific cases, the national authorities and Europol may request access to data entered in the VIS for the purpose of preventing, detecting and investigating terrorist and criminal offences. The procedures for such consultations are established in Council Decision 2008/663/JHA³ ('VIS Decision'). These consultations are carried out via central access points in the participating countries and by Europol.

The VIS first became operational in October 2011. The system was gradually rolled out between October 2011 and February 2016 and is completely rolled out worldwide today⁴.

The architecture of the VIS mirrors that of Eurodac and other large-scale IT systems: a central unit ('central VIS') managed by the European Agency for the operational management of large-scale IT

¹ Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS), OJ L 213, 15.06.2004, p. 5.

² Regulation 2008/767/EC of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas, OJ L 218, 13.8.2008, p. 60.

³ Council Decision 2008/633/JHA of 23 June 2008 concerning access for 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

⁴ The roll-out to consular posts of Member States and external border-crossing points took place on a regional basis in accordance with three Commission decisions; Commission Decision 2010/49/EC of 30 November 2009 determining the first regions for the start of operations of the Visa Information System (VIS), OJ L 23, 27.01.2010, p. 62; Commission Implementing Decision (2012/274/EU) of 24 April 2012 determining the second set of regions for the start of operations of the Visa Information System (VIS), OJ L 134, 24.05.2012, p. 20; Commission Implementing Decision 2013/493/EU of 30 September 2013 determining the third and last set of regions for the start of operations of the Visa Information System (VIS), OJ L 268, 10.10.2013, p. 13.

systems in the area of freedom, security and justice⁵ ('eu-LISA') (Article 26) and connected to national units in the Member States using Testa.

On 15 May 2018, the Commission issued a proposal⁶ to amend the VIS Regulation and the Visa Code among other legislative acts. This proposal notably proposes to include long stay visas and residence permits in the VIS, to lower the fingerprinting age of child applicants for short stay visas from 12 to 6 years old, to introduce the possibility to check visa applications recorded in the VIS against other EU information systems and to require the storage of a copy of the bio-page of visa applicants' travel documents in the VIS.

As established in the VIS Regulation, the lawfulness of the processing of personal data by the Member States shall be monitored by the national Data Protection Authorities ('DPAs') (Article 41) and the European Data Protection Supervisor ('EDPS') is in charge of checking the compliance of eu-LISA (Article 42). In order to ensure a coordinated supervision of the VIS and the national systems, Article 43 establish the VIS Supervision Coordination Group ('VIS SCG').

The present document presents the Activity Report of the VIS SCG for the period 2017-2018. Ms Vanna Palumbo and Ms Caroline Gloor Scheidegger were respectively Chair and Vice-Chair of the VIS SCG, until Ms Gloor Scheidegger was elected as Chair at the meeting of 15 November 2017. Ms. Eleni Maragkou was elected as Vice-Chair of the VIS SCG at the meeting of 13 June 2018.

Section 2 of this Activity Report presents the main principles of the coordinated supervision for the VIS and summarises the four meetings' that took place during this period.

Section 3 presents the main issues discussed and the main achievements of the Group during those two years.

Section 4 reports on the activities of each Member of the VIS SCG carried out at national level.

Section 5 concludes the document by giving a brief general overview of activities to come in the next reporting period to the extent they can already be anticipated.

2. Organisation and Coordinated Supervision

2.1 Main principles

The cooperation took the form of meetings held on a regular basis with all DPAs in charge of supervising the VIS at national level and the EDPS, acting together as the VIS SCG. The main purpose of these meetings was to discuss common problems related to supervision and find common solutions or approaches whenever possible. According to Article 5 of the Group's Rules of Procedure, these meetings shall take place at least twice a year. In practice, two meetings are

⁵ The Commission was responsible for the operational management of the VIS for a transitional period until the establishment of a new permanent IT Agency, eu-LISA, which became fully operational in December 2012.

⁶ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 767/2008.

held per year. The Commission and eu-LISA are also invited to parts of the meetings in order to update the Group on new developments regarding the VIS.

2.2 The Supervision Coordination meetings

In the period 2017-2018, four supervision coordination meetings took place in Brussels on the following dates:

- 13 June 2017;
- 15 November 2017;
- 13 June 2018;
- 15 November 2018.

The four meetings were held at the European Parliament. As usual, they were organised back-to-back with the Eurodac SCG and the SIS II SCG meetings in order to reduce the financial, travel and administrative burdens and to ensure consistent, horizontal supervision policies of those large scale IT systems where possible.

Typically, the first part of the meeting is devoted to a presentation by the European Commission and eu-LISA on recent developments regarding VIS that impact data protection. This helps to ensure that the Group is always kept up-to-date in order to ensure effective supervision. The second part is devoted to discussions between DPAs on issues that are in need of checking at national level or on new developments of interest for VIS supervisors.

The following paragraphs briefly recapitulate the topics discussed and actions taken at the four meetings.

Meeting of 13 June 2017

The Group invited representatives of the Commission and the data protection officer ('DPO') of eu-LISA. The DPO of eu-LISA updated the group on the overall performance of the VIS and the latest developments related to the quality of data in the system. The Commission gave a presentation on the proposed Smart Borders package under negotiations between the EU co-legislators, focusing on the main aspects of relevance for the visa procedure and the VIS. Within this context, the Group discussed the Commission's Regulatory Fitness and Performance (REFIT) programme report of the Visa Information System⁷. The Report looked at the VIS legal framework and examined whether the instrument is fit for purpose, delivers on its objectives at a reasonable cost and has a clear EU added value.

The Group exchanged views on a draft report on the implementation of Article 41 of the VIS Regulation, which relates to the data protection audit of national systems that DPAs shall carry out at least every four years.

⁷ Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) No 767/2008 of the European Parliament and of the Council establishing the Visa Information System (VIS), the use of fingerprints at external borders and the use of biometrics in the visa application procedure/REFIT Evaluation, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/borders-and-visas/visa-policy/docs/report_to_the_european_parliament_and_council_on_implementation_of_vis_en.pdf.

Finally, the Group discussed the first draft Activity Report for the period covering 2015-2016.

Meeting of 15 November 2017

The VIS SCG elected Ms Caroline Gloor Scheidegger, the representative from the Swiss DPA, as Chair of the VIS SCG.

The Group invited representatives of the Commission and the DPO of eu-LISA. The DPO of eu-LISA updated the group on the overall performance of the VIS and the latest developments related to the quality of data in the system. The Commission then gave a presentation of the overall evaluation of the VIS and the recommendations regarding the need for revision or extension of the VIS functions, and informed the Group of the two public consultations launched in relation to the future of the VIS.

The Group had further exchange of views on a draft report on the implementation of Article 41 of the VIS Regulation and a draft Note on the data protection law applicable to external service providers (ESPs).

Additionally the Group started to work on a new topic: the training on data protection provided to staff of authorities with access to the VIS.

Finally, the VIS SCG adopted its Activity Report for the period of 2015-2016.

Meeting of 13 June 2018

The Group invited representatives of the Commission and the DPO of the eu-LISA. The data protection officer of eu-LISA updated the group on the overall performance of the VIS and the latest developments related to the quality of data in the system. The Commission then gave a presentation of the Proposal to amend the VIS Regulation tabled by the Commission in May 2018 which includes important changes from a data protection prospective.

The Group finalised and adopted its report on the implementation of Article 41 of the VIS Regulation. The Group also finalised and adopted its analysis of the data protection law applicable to ESPs and recommendations for the use of ESPs.

In addition, the Group adopted a questionnaire regarding the training on data protection provided to staff of authorities accessing the VIS. The Group also adopted a common letter of the Eurodac, SIS and VIS SCGs on the proposals to establish interoperability between large-scale IT systems tabled by the Commission in December 2017 addressed to the Presidents of the European Commission, of the European Parliament and of the Council.

Finally, Ms. Eleni Maragkou, from the Greek DPA, was elected as Vice-Chair of the VIS SCG.

Meeting of 15 November 2018

The Group invited representatives of the Commission, who updated the Group on the state of play of the Proposal on the VIS Regulation. The Group discussed further its position on the most critical points of the Proposal for a new VIS Regulation.

Additionally, the Group discussed the first outcome of the questionnaire on the provision of training on data protection to staff members of authorities with access to the VIS, in light of the responses received until then.

Finally, the VIS SCG had a first exchange of views on the activities to include in its future Work Programme for the period 2019-2021.

3. 2017-2018: Main achievements

3.1 Implementation of Article 41 of the VIS Regulation

Following the meeting of the Group of 15 June 2016, the VIS SCG decided to work on the implementation of Article 41 of the VIS Regulation. Article 41 of the VIS Regulation imposes the obligation upon national Data Protection Authorities ('DPAs') to carry out an independent audit at least every four years to check the lawfulness of processing operations upon personal data recorded in national VIS systems. The Group decided to assess the implementation of Article 41 of the VIS Regulation by completing a questionnaire agreed on during the VIS SCG meetings. Based on the Members' responses to the questionnaire, the VIS SCG adopted a Report in which the VIS SCG made several recommendations. It notably recommended that DPAs should ensure that the inspection of the VIS national system is carried out every four years in accordance with Article 41(2) of the VIS Regulation. Additionally, it recommended that DPAs should not only monitor the lawfulness of VIS personal data processing but also systematically check as part of their audit the security measures in place, the list of authorities designated to access the VIS and access rights of their staff. Lastly, the Report concluded that Member States should allocate additional and sufficient financial and human resources to the DPAs for the supervision of the VIS in accordance with Article 41(3) of the VIS Regulation.

3.2 Review of the VIS proposal

On 15 May 2018, the Commission issued a proposal⁸ to amend the VIS Regulation and the Visa Code among other legislative acts. This proposal notably proposes to include long stay visas and residence permits in the VIS, to lower the fingerprinting age of child applicants for short stay visas from 12 to 6 years old, to introduce the possibility to check visa applications recorded in the VIS against other EU information systems and to require the storage of a copy of the bio-page of visa applicants' travel documents in the VIS.

The VIS SCG analysed the proposal and its data protection implications and adopted letters with comments on the proposed changes to the VIS Regulation and its recommendations. It addressed the letters to the European Commission, the European Parliament, the Council and eu-LISA. The VIS SCG focused on four main aspects of the Proposal: (1) the fingerprinting of children, (2) law

⁸ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 767/2008.

enforcement access, (3) the extension of the scope of the system to also cover long-stay visas and residence permits, and (4) the supervision architecture.

3.3 External Service Provider paper

In October 2015, the VIS SCG decided to work on an analysis of the data protection law applicable to ESPs. The Visa Code⁹ establishes the procedures and conditions for issuing short-stay visas in the EU Member States. According to Article 40 of the Visa Code, such applications shall, in principle, be lodged at a consulate of the Member State. In particular circumstances, or for reasons relating to the local situation, a Member State may cooperate with an External Service Provider (ESP). This is expressed as “a last resort” and is further regulated in Article 43 of the Visa Code. Cooperation with ESPs must be distinguished from cooperation with commercial intermediaries in accordance with Article 45.

The VIS SCG adopted a Note in which the VIS SCG provides for a detailed analysis of the data protection law applicable to the ESPs by assessing its legal basis under the VISA Code, its tasks, contracts and the supervision performed by Member States. Additionally, it provides for specific recommendations to EU legislators, Schengen Member States and DPAs when dealing with ESPs.

4. Members' Reports

4.1. Austria

- Overview: state of play and developments

There were no problems reported neither by the Ministry of the Interior as controller of VIS, nor by the Ministry of Foreign Affairs as processor, nor by data subjects. A VIS inspection is planned to be carried out by the Austrian DPA in the second half of 2019, including an on-site inspection.

- Inspections

An inspection of the national VIS system was carried out by the Austrian DPA in 2017 and in 2018 respectively. In this context, the consulates in Mexico City and Cairo were inspected. The Austrian DPA found that the controller and the processor overall complied with the relevant national and EU data protection rules and no recommendations were issued.

- Complaints

There were no complaints filed with the Austrian DPA during the reporting period.

- Remarks

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⁹ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), OJ L 243, 15.9.2009, p. 1.

4.2. Belgium

- Overview: state of play and developments

The Belgian Act of December 3rd 2017 establishing the Data Protection Authority provides for the establishment of an inspection service, which is the investigative body of the DPA. By the end of 2018, the new Inspector General had not yet been appointed and the service was not fully operational.

During this transition period, the following actions were undertaken.

The DPA:

- Sent a letter to the Ministry of Foreign Affairs (MFA) in June 2017 clarifying its position regarding the shared responsibilities in the context of VIS-related processing activities. In that respect, the DPA followed closely the effective drafting of a MoU establishing clear responsibilities between the MFA and the Federal Immigration Office (FIO);
 - Held an initial meeting with the FIO in May 2018 to prepare for an audit planned for the next year;
 - Analyzed and provided feedback in July 2018 on the new information clause drafted by the FIO for long term visa application forms;
 - Was invited in October 2018 to a presentation of the new database of the FIO relating to VIS processing.
- Inspections

The DPA was mainly in transition phase with the new inspection service being set up.

The Belgian DPA visited the Belgian Embassy in Tunis in the beginning of September 2017.

Staff of the DPA participated to Schengen Evaluations in Switzerland and Latvia in 2018.

- Complaints

The Belgian DPA did not receive any formal complaint. It received a request for assistance by a data subject for the exercise of his right of access and correction with the FIO, to data relating to him recorded in the VIS.

- Remarks

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4.3. Bulgaria

- Overview: state of play and developments

The Council of the European Union adopted a Decision (EU) 2017/1908 of 12 October 2017 on the putting into effect of certain provisions of the Schengen *aquis* relating to the Visa Information System in the Republic of Bulgaria and Romania.

- Inspections

The Bulgarian supervisory authority puts a focus on its control activities, with regard to VIS. It is planned that inspections, related to the requirements that need to be fulfilled by the Republic of

Bulgaria with regard to the full accession to the Schengen area and the VIS, will be performed. In addition, inspections of at least two Bulgarian missions abroad that issue a large number of Schengen visas are planned.

- Complaints

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- Remarks

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4.4. Croatia

- Overview: state of play and developments

As the Republic of Croatia uses for its visa procedures a national information system (Croatian Visa Information System - "CVIS") which is not linked to the Visa Information System (VIS), it should be noted that the provisions of the Regulation on the Croatian Visa Information System (Official Gazette 36/13 and 105/17) concerning the authority and obligations of the Agency for the Protection of Personal Data as a national supervisory authority (national DPA) are substantially in accordance with the provisions of the VIS Regulation. Furthermore the provisions of paragraph 2 of Article 37 of the Regulation on the Croatian Visa Information System ("CVIS") related to the supervisory obligations of the DPA in terms of content corresponding to the provisions of point 2 of Article 41 of Regulation (EC) No 767/2008 of the European Parliament and the Council of 9 July 2008 on the Visa Information System (VIS) and the exchange of information between Member States on short-stay visas.

The change/development in the period 2017-2018 related to "CVIS" is upgrading the functionality to allow visa rejection forms to be printed directly from "CVIS", whereas before authorized officials had to fill out the rejection form on another computer, which represented a slowdown of the work process and was questionable from a personal data protection point of view. Currently, simply through "CVIS", after the visa has been refused, everything is copied into the form and printed directly from the "CVIS".

- Inspections

Pursuant to the Sectoral Supervision Plan in 2017 and 2018, the implementation of surveillance activities in accordance with the obligations laid down in the "CVIS" (Croatian Visa Information System) Regulation (Official Gazette 36/13 and 105/17) continued as a check of the preconditions for meeting the Schengen acquis requirements related to the Visa Information System (under Regulation (EC) No 767/2008 of the European Parliament and of the Council of 09 July 2008 on the Visa Information System (VIS) and the exchange of information between Member States on short-stay visas).

Supervision of the processing and enforcement of personal data protection was carried out - direct supervision at the Ministry of Foreign and European Affairs at the Headquarters (Zagreb) as the data controller for personal data processed in "CVIS" (Croatian Visa Information System), in particular in relation to recommendation no. 12. Expressed in the Assessment on the Possible Implementation of Recommendations Containing Indications for Possible Further Improvements

following the 2016 Evaluation of the Republic of Croatia on the Application of the Schengen Acquis in the Field of Data Protection, according to Council Implementing Decision 5725/17 of 27 January 2017 laying down recommendations for elimination of the shortcomings identified in the evaluation of Croatia regarding the fulfillment of the conditions necessary for the application of the Schengen acquis in the field of data protection.

In the period 2017-2018, the Croatian DPA also carried out planned inspections regarding the processing of personal data in the VIS ("CVIS" - Croatian Visa Information System) in operational units of the Ministry of the Interior ("MoI"), specifically border crossings (road, air and sea/maritime) which included some of the major border crossings (road border crossings Macelj and Bajakovo, air border crossings in Zagreb and Split and sea/maritime border crossings in Split and Dubrovnik).

The aforementioned inspections were carried out directly at the premises (on-site) of the border crossings (road, air and sea/maritime) by the supervision team of the Croatian DPA.

In conducting these inspections no activities that did not comply with the applicable legislative framework were found, but several recommendations were issued to improve security features, data processing procedures and availability of information for data subjects.

- Complaints

In 2017 and 2018, the Ministry of Foreign and European Affairs ("MFEA") did not receive requests from the data subject regarding the processing of his/her personal data in the VIS ("CVIS"). Visa applicants submitted inquiries concerning only the visa application process and the lodging of an appeal in cases where a visa was refused.

During the reporting period, the Croatian DPA did not receive any complaints regarding the processing of personal data in the VIS ("CVIS").

- Remarks

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4.5. Cyprus

- Overview: state of play and developments

In February 2018, the Council of Ministers adopted a decision for the functioning of the national VIS.

- Inspections

No inspection has been carried out.

- Complaints

No complaints have been submitted to the DPA insofar.

- Remarks

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4.6. Czech Republic

- Overview: state of play and developments

The Czech DPA has actively participated in activities connected with the supervision of the VIS and Schengen cooperation. The Czech DPA monitored independently the lawfulness of personal data processing, ensured compliance with the relevant legislation in particular with respect to data subject rights whose personal data are processed. Moreover, experts of the DPA actively participated under the Schengen evaluations missions in Spain (2017) and Lithuania (2018).

- Inspections

The Czech DPA conducted an audit at national level in 2018. The inspection was based on the Inspection plan of the DPA and obligations arising from application of the relevant VIS legislation, since the last audit of the national VIS took place in 2014.

The inspection was primarily aimed at personal data processing in the VIS with regard to issuing short-term visa (“Schengen visa”). One of the on-site inspections took place at the General Consulate of the Czech Republic in Istanbul where cooperation with the External Service Provider (“ESP”) was checked with the aim at the content of the contract and required security measures. Security measures were checked and described both on general level and at a chosen Consulate.

To sum up, no violation of law was detected during the inspection. Corrective measures were not therefore necessary. The DPA only recommended to provide detailed measures for handling of CDs used to transport data from the ESP to the Consulate.

- Complaints

During the period under review, the Czech DPA received precisely 43 requests concerning Visa issuing process and Visa policy of the Czech Republic, which fell within the scope of competences of the Ministry of Foreign Affairs. The DPA clarified the division of its powers in visa sector and informed the applicants how to contact the Ministry.

The Czech DPA received 2 requests concerning processing personal data in the VIS. These requests were subsequently forwarded by the DPA to the competent data controller of the national VIS – Police of the Czech Republic.

No complaints were received during the period 2017-2018.

- Remarks

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4.7. Denmark

- Overview: state of play and developments

In February 2017, a Schengen Evaluation of Denmark was carried out by the Commission, Member State experts and an observer from the European Data Protection Supervisor. In this context the application of VIS was also evaluated. The report of the Schengen Evaluation was delivered in November 2017.

- Inspections

During this reporting period, the Danish DPA has carried out one inspection on the processing of personal data related to the use of the VIS. The inspection was carried out in December 2018, and was initiated at the Danish Ministry of Immigration. The inspection is still ongoing.

- Complaints

The Danish DPA has not received complaints regarding personal data processing in the VIS during the reporting period.

- Remarks

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4.8. EDPS

- Overview: state of play and developments

As the supervisory authority for eu-LISA, the EDPS was in contact with eu-LISA on a number of occasions, both on working and management levels.

Concerning policy developments, the EDPS published an [Opinion on the proposal for a new regulation on the Visa Information System](#) on 13 December 2018. Linked to the VIS, the EDPS commented on two Regulations establishing a framework for interoperability between EU large-scale information systems in an [Opinion published on 16 April 2018](#). Beyond the VIS as such, the EDPS also published an [Opinion on the proposal for a new eu-LISA Regulation](#) on 10 October 2017.

- Inspections

During the reporting period, the EDPS conducted an audit under Article 42(2) of the VIS Regulation at eu-LISA premises in Strasbourg (France). The on-site phase happened in November 2018. The final inspection report was distributed to eu-LISA, the European Parliament, the Council of the European Union, the European Commission and the national data protection authorities in line with Article 42(2) of the VIS Regulation after the end of the reporting period.

- Complaints

Given the role of the central system, complaints against the processing of personal data in the VIS will most likely be directed against processing under the responsibility of the Member States. For example when a person complains about a refused visa application or when they are not satisfied with an answer to an access request.

In 2017 and 2018, the EDPS received 2 such complaints. In reply to these complaints, the EDPS explained the division of responsibilities between the national and European levels and informed complainants who best to contact for their queries. Where, based on the information provided by complainants, it appears that the complainants' actual problem may have been an entry ban against them entered in the Schengen Information System under Article 24 of Regulation 1987/2006¹⁰, the EDPS also provided them with information on how to exercise their rights regarding that system.

¹⁰ OJ L 381/4, 28/12/2006

Only complaints related to processing under the responsibility of the central unit would be relevant for the EDPS. The EDPS has not received such complaints during the reporting period.

- Remarks

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4.9. Estonia

- Overview: state of play and developments

The Estonian DPA had regular activities within the VIS SCG and a supervisory and consultative role at national level for authorities and the public.

- Inspections

The Estonian DPA did not conduct inspections.

- Complaints and access requests

A data subject filed for an access request with the Estonian DPA to receive his personal data in the VIS. We forwarded his request to the Estonian authority that is responsible for the national part of VIS. The controller notified that they also received an access request from the same data subject and hence there was no need to process his request any further. After that he confirmed that he received his personal data and he also wanted to delete his data in VIS (he said the personal data was false and illegal). The said data was entered by another Member State. After receiving this information we informed him that according to Regulation (EC) no 767/2008 art 24 (1) only the Member State responsible shall have the right to amend the data which it has transmitted to the VIS, by correcting or deleting such data. That means the Member State's authorities that entered the personal data must review his data in VIS and if necessary, amend the said data.

- Remarks

In 2017 the Estonian Ministry of Interior presented us the draft law that was designed to set the data retention periods for N-VIS. The explanations to the draft gave some explanation on the retention periods, but it did not cover all the data that was collected. Therefore we gave our feedback on that: primarily we had remarks on how long Estonian authorities can retain data. The most unclear aspect was the retention period for the paper documents. We also noted that there should be clearer rules that describe how and why the relevant authority could have access to the archived data – this information was given in the explanations to the draft statute, but they were not in the draft itself. We also suggested that the statute should contain a separate paragraph on logs and checking of logs. These changes did not come into effect since Ministry of Interior decided to postpone these changes and make the changes with the relevant law package that implements the General Data Protection Regulation.

4.10. Finland

- Overview: state of play and developments

The Schengen Evaluation of Finland on data protection including VIS evaluation was carried out in June 2018. Taking into consideration the resources required for the evaluation, the DPA did not initiate any other supervisory activities concerning VIS during the year 2018.

- Inspections

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- Complaints

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- Remarks

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4.11. France

- Overview: state of play and developments

The French DPA took part to all activities and meetings of VIS SCG and ensured its supervisory and consultative role at national level, towards competent authorities and the general public.

The VIS is used for the examination of requests for short stay visas and decisions to refuse, extend, cancel or revoke a visa. It is also used to facilitate the verifications and identifications of visa applicants. In France, the Ministry of Interior and the Ministry of Foreign Affairs share competences with regard to the common visa policy. Today, the French visa information system contains three data processing systems: the France-Visas system, the VISABIO system and the VIS. These three systems are interoperable.

- Inspections

The French DPA did not carry out new inspections in relation to data processing within the VIS. The French DPA has however liaised with competent national authorities in order to address the recommendations made within the framework of the 2016 evaluation of France on the application of the Schengen acquis. Controls had been initiated in 2015 and 2016 within the framework of this evaluation.

- Complaints

The French DPA has not received any complaints in relation to data processing within the VIS.

- Remarks

In May 2017, the French DPA issued a positive opinion with reservation on the new France-Visas systems, which has been deployed in 2017-2018, replacing the Global Virtual Network system of visas (RMV2).

4.12. Germany

- Overview: state of play and developments

Germany has established the use of the VIS in embassies and consulates abroad according to the roll-out plan set up by the European Commission. The roll-out had been finished in the previous reporting period. The VIS is being used by German consulates and embassies worldwide.

External Service Providers have been contracted in a variety of places, particularly where very many visa applications have to be examined. ESPs are regarded to enhance efficiency and speed of visa processes.

Various Law Enforcement Authorities may have, under specific conditions, access to data stored in the VIS.

- Inspections

After, in the previous reporting period (2015-2016), an onsite inspection at one consular post as well as at the Federal Administration Office (Bundesverwaltungsamt – BVA) had been finished, another onsite inspection at a diplomatic mission abroad was prepared and conducted by a small, dedicated team consisting of legal and technical experts of the Office of the in the summer of 2018. This included an inspection of VIS data flows and processing operations. A report comprising the BfDI team’s findings was sent to the Ministry for Foreign Affairs. A follow up visit at the BVA, which is in charge of running the national visa database and of providing the national interface to the Central Unit of the VIS on behalf of the Ministry of Foreign Affairs in Germany, was prepared and eventually scheduled for the following year (2019). Additional conversations with representatives of the Federal Ministry for Foreign Affairs were held.

Regarding law enforcement access (LEA) to the VIS, the Office of the Federal Commissioner for Data Protection and Freedom of Information conducted an informatory visit to the Federal Office for Administration (FOA), which is the central access point for access requests of the Federal Criminal Agency, the Federal Police and the Customs Criminal Investigations Office. The agenda covered especially the procedures for access requests and the logging and provided the Data Protection Authority with necessary information for following inspections of access requests.

In 2017 and 2018 the Federal DPA conducted one inspection on the lawfulness of access requests at the Federal Police Directorate Frankfurt Airport and another inspection at the Customs Criminal Investigations Office Headquarters. Regarding the Federal Police inspection, the DPA picked a sample of about 25 % of the access requests of one year. In all cases the lawfulness of the request could be established by the records and complementary information given by persons in charge. Nevertheless, the DPA recommended some improvement of the documentation to be self-explanatory. Regarding the Customs Criminal Investigations Office Headquarters, a full inspection of all access requests of one year was conducted. In all cases the lawfulness of the access requests could be established by the records without the need for further information. Therefore the inspection could be concluded without particular criticism or recommendations.

Furthermore, in 2018, one inspection of the lawfulness of access requests was conducted at the Federal Intelligence Service. The result is still under consideration and the inspection report is still being prepared.

- Complaints

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- Remarks

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4.13. Greece

- Overview: state of play and developments

The Hellenic DPA maintained a steadfast working relationship with the controller of N.VIS i.e., the Ministry of Foreign Affairs, mainly on the follow up to the Schengen Evaluation of Greece that

took place in 2016 and the ensuing formation of the relevant Action Plan as well as other Schengen Evaluation and data protections topics.

- Inspections

No inspection was carried out during the specified time frame.

- Complaints

The Hellenic DPA did not received any complaints in relation to data processing within the VIS.

- Remarks

No further remarks.

4.14. Hungary

- Overview: state of play and developments

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- Inspections:

In April, 2017 the Hungarian Embassy and Consulate in Skopje, Macedonia was inspected. The DPA used a questionnaire (sent to the inspected consular post in advance) besides the on-spot inspection in Skopje.

The Hungarian National Authority for Data Protection and Freedom of Information was planning to carry out its data protection inspections regarding VIS issues at the Immigration and Asylum Office and at various Hungarian consulates in November, 2018 but all of those activities were actually carried out in 2019.

- Complaints:

The Hungarian DPA received 3 complaints regarding VIS in the period of 2017-2018.

- Remarks:

The DPA set up a questionnaire and established the methodology for launching audits at external service providers of the different consular posts with the help of the Consular Service (MFAT).

4.15. Iceland

- Overview: state of play and developments

The VIS system is accessible to the Directorate of Immigration, the Ministry of Foreign Affairs and designated police authorities.

- Inspections

The Icelandic DPA began a full audit of the VIS in Iceland.

- Complaints

The Icelandic DPA received no complaints during the period.

- Remarks

The Icelandic DPA has no remarks regarding the period in question.

4.16. Italy

- Overview: state of play and developments

Following the Evaluation Report C(2016) 7202 of Italy on the application of the Schengen acquis in the field of data protection, and in accordance with the Council Recommendations 6355/17 of February 17, 2017, Italy adopted the Action Plan in the relevant period to remedy the deficiencies identified in the Schengen Evaluation. The implementation of the Action Plan is almost completed.

The Italian DPA completed the first VIS audit, pursuant to Article 41(2) of the VIS Regulation, in July 2018. The audit took into consideration both lawfulness of the processing of VIS data, including visa issuance procedures, and data and system security, taking also into consideration some recommendations issued in the Schengen Evaluation. The verification(s) entailed both requests for information and several on-site visits, including a visa office in a consular unit and an outsourcer's operational headquarters.

Following the above checks, the audit was finalised in July 2018 by the DPA, which issued a decision containing specific compliance measures with regard to the criticalities identified. The Italian DPA is closely monitoring the full implementation of the measures in question, which the Ministry for Foreign Affairs is expected to complete shortly.

- Inspections

During the period covered by this Activity Report, several on-site visits were carried out by the Italian DPA. The inspections involved both the visa application and issuance procedures and the IT systems (N-VIS, L-VIS, Visa-Out, i.e. the outsourcers (ESP) interface platform). Some of these on-site visits concerned the Minister for Foreign Affairs directorate tasked with IT systems that runs the VIS platform along with the outsourcer interface software, Visa-Out (2017, 2018). The remaining on-site visits concerned operating arrangements and procedures at a visa unit in a consular office abroad (Istanbul) and an outsourcer's operational headquarters (2017); they were carried out with the assistance of staff from the Italian consular office.

- Complaints

Only one complaint was received in 2018, regarding a data subject's right to access his personal data in the VIS. The Ministry for Foreign Affairs complied with the data subject's request.

In the relevant period, the Italian DPA received also a few unspecific complaints against visa refusals. In these cases, the DPA informed the complainants on how to contact the Ministry for Foreign Affairs and exercise data subjects' rights, providing clarifications also on its supervisory competences regarding the VIS.

- Remarks

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4.17. Latvia

- Overview: state of play and developments

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- Inspections

In relation to the inspections on data processing in the VIS information system, in 2017 an inspection on data processing in the VIS national system was initiated and information was requested from the controllers involved;

In addition - in November 2017 a visit was carried out at the Latvian Embassy in Moscow, Russia regarding the processing of personal data in connection with the issuance of Visas;

On March, 2018 in Latvia was organized a European Commission Schengen evaluation visit in the field of data protection, including data processing in the VIS information system. The Inspectorate coordinated this visit. Inspections, including those on visa procedures were carried out.

- Complaints

There have been no complaints received regarding the data processing in the VIS;

There has been no major development regarding the national legislation that concerns the VIS.

- Remarks

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4.18. Liechtenstein

In the year 2017/2018 no specific activity from the national supervisory authority regarding VIS has taken place.

4.19. Lithuania

- Overview: state of play and developments

The evaluation of Lithuania on the application of the Schengen acquis in the field of data protection was carried out in November 2018 according to the new Schengen Evaluation procedure. The Report related to the evaluation was adopted at the Schengen Committee meeting of 24 September 2019.

In 2018 the DPA produced brochure “Personal Data Protection in the Visa Information System” (available in several languages) on the processing of data in VIS and the related data subjects’ rights.

- Inspections

In 2017 the Lithuanian DPA carried out two on-site inspections regarding access to the national VIS by Migration Department and law enforcement authorities (SIRENE national unit at the Lithuanian Criminal Police Bureau, State Border Guard Service at the Ministry of Interior of the Republic of Lithuania, Financial Crime Investigation Service at the Ministry of Interior of the Republic of Lithuania). During the inspections, it was established that in some authorities while conducting searches in VIS, not all public servants always indicate the correct purpose of the search, therefore Lithuanian DPA gave recommendations on that. Recommendations have been fulfilled.

In 2018, a mixed (questionnaire and on-site visit to check documents and to make interviews) inspections in the Ministry of the Interior (MoI) on N. VIS was carried out using VIS Supervision Coordination Group's Common Audit Framework Data Security Module for Large Scale IT Systems questionnaire. In order to improve the security of the cryptographic tools and cryptographic keys used in the N.VIS, the Lithuanian DPA recommended to the MoI to prepare a document in which requirements for handling cryptographic keys throughout their lifecycle, including key generation, storage, archiving, selection, splitting, liquidation and destruction would be specified. Recommendations have been fulfilled.

- Complaints

The Lithuanian DPA has not received any complaints regarding data processing in the VIS in the period 2017-2018.

- Remarks

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4.20. Luxembourg

- Overview: State of play and developments

As indicated in the previous activity reports, Luxembourg had two different supervisory authorities competent for the monitoring of the use of VIS data. Besides the Luxembourgish DPA, a specific Supervisory Authority was competent for monitoring the access to VIS data by law enforcement authorities.

Since the entry into force of the Act of 1 August 2018 on the organisation of the National Data Protection Commission and the general data protection framework (implementing the GDPR) and the Act of 1 August 2018 on the protection of individuals with regard to the processing of personal data in criminal and national security matters (implementing Directive 2016/680), the above-mentioned specific Supervisory Authority does no longer exist. Its tasks and powers have been transferred to the Luxembourgish DPA.

Following the evaluation of Luxembourg on the application of the Schengen acquis in the field of Data protection, the Council adopted in January 2017 an implementing decision setting out 17 recommendations on addressing the deficiencies identified. In April 2017, the Luxembourgish DPA presented to the European Commission its action plan to remedy the deficiencies identified.

- Inspections

In 2017, the Luxembourgish DPA carried out an audit pursuant to Article 41(2) of the VIS Regulation and issued several recommendations in 2018.

- Complaints

No complaints relating to VIS have been received during the reporting period.

- Remarks (issues or problems)

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4.21. Malta

- Overview: state of play and developments

VIS operation

During the period under review, no specific technical or organisational issues were encountered in relation to the VIS operation for Malta.

No developments were reported during the past two years in the field. Furthermore, from the statistics provided by eu-LISA, it emerged that the technical issues, including the generation of errors occurring when conducting biometric checks, were addressed.

Legislation

With the coming into effect of the GDPR on 25th May 2018, the processing operations concerning VIS, became also subject to the GDPR, in those situations where the VIS legal framework remains silent.

- Inspections

Since most of the Office's resources were deployed on the implementation of the GDPR, no specific inspections or other supervisory activities were conducted in relation to VIS during the period under review. Having said this, more inspections and supervision work is envisaged for 2019 and 2020.

- Complaints

No complaints were received during the period under review.

- Remarks

No further remarks.

4.22. Netherlands

- Overview: state of play and developments

As already mentioned in the previous VIS activity report (2015-2016), the first mandatory VIS audit took place in 2015. The audit was executed by the Dutch Audit Government Service (Audit Dienst Rijk, ADR). Scope of the audit was to verify whether all users of the national VIS comply with the applicable data protection legislation (both national and European) in relation to the processing of personal data in the national VIS.

Findings and recommendations included overall compliance with provisions on transparency, legal basis for processing, data subject's rights and international transfers. After the audit, all users set up action plans in order to implement the recommendations. Users reported to the Dutch DPA on a regular basis as to the status of the implementation of these recommendations. In February 2018 all recommendations were implemented.

In December 2016 the DPA sent in national replies to a questionnaire on Article 41 VIS Regulation as drawn up by the VIS SCG. A final report of VIS SCG on that matter was issued in June 2018.

- Inspections

During the reporting period 2017-2018, no inspections VIS took place. Inspections of two consular posts are currently (2019) in process. According to the DPA's multiannual inspection plan (2019-2023), inspections are planned to take place on a regular basis.

- Complaints

No complaints have been received during the reporting period.

- Remarks

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4.23. Norway

- Overview: state of play and developments

The Schengen Evaluation of Norway on data protection, which also included VIS, was carried out in November 2017.

- Inspections

The Norwegian DPA did not carry out any inspections during the reporting period.

- Complaints

The Norwegian DPA has not received any complaints during the reporting period.

- Remarks

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4.24. Poland

- Overview: state of play and developments

Between 2017 and 2018, the Polish DPA carried out 11 inspections.

- Inspections

The Polish DPA carried out seven inspections in 2017 and four inspections in 2018. The following authorities were controlled: The Ministry of Foreign Affairs and consular sections of the Embassies of the Republic of Poland (Tallinn, Zagreb, Helsinki, Dublin, Stockholm, Vienna, Brussels, Lisbon, The Hague, Paris).

In general, the results of the inspections were satisfactory, in two cases the following shortcomings were found. Both situations concerned technical issues.

- Complaints:

No complaints related to VIS issues have been received during the reporting period.

- Remarks:

Until now, no special problems concerning the VIS have occurred.

4.25. Portugal

- Overview: state of play and developments

The most substantial development during this period was the access by law enforcement authorities to the VIS under Decision 2008/663/JHA, which started in 2017.

- Inspections:

The DPA was unable to complete its audit activity to the VIS due to a significant lack of human resources.

- Complaints:

There were no complaints submitted to the DPA related to VIS issues.

- Remarks:

Considering the obligation of the Member States, laid out in Article 41 (3) concerning the resources to be afforded to national data protection authorities, a special note is due to stress precisely the lack of resources of the Portuguese DPA to adequately perform its tasks under Regulation (EC) 767 /2008.

This situation was repeatedly reported at national level as well as to European level, through the Schengen evaluation follow-up reports.

4.26. Romania

- Overview: state of play and developments

Romania is not connected to the VIS and does not have access to it. Even if Romania informed that it has already fulfilled its legal obligations concerning the VIS, as well as its technical obligations relating to the establishment and operation of a national VIS system, it continues to use a National Visa Information System (NVIS) for visa issuance and related checks of third country nationals.

- Inspections

The National Supervisory Authority for Personal Data Processing performed an inspection to the Ministry of Foreign Affairs in order to handle the complaint received. The complaint was referring to impossibility to obtain the deletion of the account created on the website www.econsulat.ro, website that belongs to the Ministry of Foreign Affairs.

- Complaints

The National Supervisory Authority for Personal Data Processing received, in 2018, 2 complaints related to processing of personal data.

- Remarks

In 2017, the Romanian Data Protection Authority gave a positive opinion on the Emergency Ordinance for the modification and completion of Law no. 271/2010 for the set up, organisation and functioning of the National System of Information on Visas and the participation of Romanian to the Visa Information System.

4.27. Slovak Republic

- Overview: state of play and developments

The Ministry of Foreign and European Affairs of the Slovak republic is the competent authority for VIS system in Slovak republic. The Office for personal data protection of the Slovak republic performed 4 inspections of personal data processing of 2017 and 2018.

- Inspections

Inspections were focused on Security of personal data processing pursuant to provision of § 19 and § 20 of the Act on Personal Data Protection, instructions of entitled person pursuant to provision of § 21 of the Act on Personal Data Protection, manner of handling the duly exercised right of data subjects pursuant to provision of § 28 and § 29 of the Act on Personal Data Protection, verification of the functionality of technical and organizational measures affecting the fulfilment of obligation to process true, accurate and up to date personal data pursuant to provision of § 16 and § 17 of the Act on Personal Data Protection.

- Complaints

The Slovak Republic DPA did not receive any complaints concerning the VIS system.

- Remarks

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4.28. Slovenia

- Overview: state of play and developments

The national VIS database is called VIZIS. The data controller of VIZIS is the Ministry of Foreign Affairs. Slovenian users can only access VIS data through VIZIS.

The Slovenian DPA has good and constant relations with the Ministry of Foreign Affairs.

- Inspections

In 2017, the Slovenian DPA carried out an inspection regarding data processing in the VIS at the Slovenian embassy in Brussels. In 2018, the Slovenian DPA carried out a general VIS inspection at the Ministry of Foreign Affairs. Based on the questionnaire prepared by the VIS SCG, a desk audit regarding training on data protection was also carried out in 2018.

- Complaints

In the period of 2017-2018, the Slovenian DPA did not receive any complaint regarding data processing in the VIS.

- Remarks

The Slovenian DPA has not been informed of any problems with the VIS database.

4.29. Spain

- Overview: state of play and developments

At the beginning of 2017, the Spanish Agency for Data Protection (AEPD) has approved the activity "*Continuous Evaluation Plan of ACERVO SCHENGEN SIS / VIS*". This plan establishes a continuous audit of all national authorities with access granted to the SIS and VIS systems.

Within the Continuous Evaluation Plan, four-year review periods are established, and includes face-to-face inspections and follow-up meetings between the AEPD and the inspected authorities in order to monitor the changes made to the VIS system by the person in charge.

Likewise, the "*Action Plan 2017-2021*" has been approved in which the specific actions to be carried out for this period are defined, including on-site inspections in the offices of the Spanish head of the national VIS system (MAEUC), border posts and Consulates from Spain abroad. The action plan was presented before the Schengen Committee of the Council of the EU on 12 of June 2019.

- Inspections

Following the plan of actions planned for the 2017-2021 period, during the year 2017 an inspection visit was carried out at the Consulate of Spain in Shanghai (People's Republic of China) and during 2018 there were face-to-face inspections at the consulates of Spain in London (United Kingdom) and Quito (Republic of Ecuador). In the same periods the corresponding recommendations reports have been prepared. These reports have been transferred to the national VIS officer (MAEUC) to make the allegations he deems necessary and to establish the dates for the correction of the deficiencies detected.

Two meetings have been held, in June and December 2017, and one in June 2018 between the AEPD and the national VIS officer, in order to monitor the changes made to the VIS system by said person in charge.

- Complaints

During 2017, two claims were filed in the AEPD and during 2018 five claims related to the VIS Information System were filed

- Remarks

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4.30. Sweden

- Overview: state of play and developments

The Swedish Migration Agency is the responsible authority for VIS in Sweden. The Swedish DPA has followed the implementation of VIS in Sweden since the beginning and carried out its first inspection at the Migration Agency in 2012. A second inspection was made in 2015 followed by two inspections at the Swedish Embassies in Moscow and Addis Ababa later that year.

In 2017, Commission and Member State experts visited the Swedish DPA as part of the evaluation mechanism of the Schengen acquis including VIS. The DPA took part in this evaluation to explain how it carries out its task as the national supervisory authority according to Article 41 of the VIS regulation. The evaluation took place at both the DPA's and the Migration Authority's premises.

- Inspections

No inspections of the VIS system were carried out in 2017-2018.

- Complaints

The Swedish DPA has not received any complaints regarding the VIS.

- Remarks

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4.31. Switzerland

- Overview: state of play and developments

In February/March 2018, a Schengen evaluation on data protection was carried out in Switzerland. The Experts also visited the offices of the Swiss DPA. A report and several recommendations were issued following the evaluation. One prioritised recommendation was to ensure that the Swiss DPA carries out at least every four years audits of data processing operations in the national system of VIS.

At national level, the Swiss DPA continued being in contact with the data protection officer (DPO) of the Swiss State Secretariat for Migration (SEM) and, when necessary, with the DPOs of the Swiss federal Department of Foreign Affairs (FDFA) and the Federal Office of Police (fedpol). At European level, the Swiss DPA attended all coordinated supervision meetings and answered all questionnaires of the VIS SCG.

- Inspections

In 2017 and 2018, the Swiss DPA carried out an inspection at the State Secretariat for Migration (SEM) concerning the data processing in relation with short-stay visa (Schengen visa). The inspection covered the data processing in the Swiss system of VIS called ORBIS including the transmission of data to and from the VIS. The Swiss DPA did not issue any recommendations but made some propositions of improvements. These concerned mainly the formation of the users of the information system VIS, some information to add on the website of the SEM and some minor security issues.

- Complaints

The Swiss DPA received no complaints in 2017 and 2018.

- Remarks

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5. What to expect next

The VIS Work Programme 2019-2021 aims to ensure the follow-up to the activities started by the Group in 2015-2016, but also envisages other new issues to be explored. Therefore, given the work already performed in 2017 and 2018, the planned activities include the following:

- Monitoring the proposal to amend the VIS Regulation;
- Common Inspection Plan;
- A report on the training of staff of authorities accessing the VIS on data protection.

Besides the activities foreseen, the VIS SCG will work on a permanent basis on the follow-up of policy and legislative developments, any ongoing issues, exchange of experiences and mutual assistance.