



V I S S C G

Activity Report 2015-2016

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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)).

The architecture 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 systems in the area of freedom, security and justice³ ('eu-LISA') (Article 26) and connected to national units in the Member States using sTesta. Article 32 sets out a list of mandatory security measures for the national units to implement; the national implementation shall also provide for audit trails (Article 34) and possibilities for a self-audit (Article 34).

The retention period is 5 years (Article 23), starting from the following points in time:

- the expiry of the visa, if one has been issued and/or extended;
- the date of the creation of the application file in the VIS, in case an application has been withdrawn, closed or discontinued;
- the date of the decision of the visa authority, if a visa has been refused, annulled or revoked.

At the end of this period, the data shall be automatically deleted. Data shall be deleted before the end of these periods if a data subject acquires the nationality of a Member State. Audit trails shall be deleted one year after the data to which they refer have been deleted, unless they are used in a data protection investigation (Article 34).

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 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.

The VIS first became operational in October 2011. To date, the system was gradually rolled out between October 2011 and February 2016 and is completely rolled out worldwide today. 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 decisions⁴.

The VIS is currently used by 30 countries, i.e. all Schengen States, all four European Free Trade Association ('EFTA') member states - Iceland, Liechtenstein, Norway, and Switzerland - and Bulgaria, Croatia, Cyprus and Romania that are not yet part of the Schengen Area but nonetheless have a visa policy based on the Schengen acquis. Ireland and the United Kingdom do not take part in the VIS (recitals 28-29).

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 the Management Authority (Article 42). In order to ensure a coordinated supervision of the VIS and the national systems, as provided for in Article 43, the VIS Supervision Coordination Group ('VIS SCG') was established. In the 2015-2016 period, the VIS SCG was chaired by Ms Vanna Palumbo (Italian DPA), while the Vice-Chair was first Mr Manuel Garcia Sanchez (Spanish DPA) and then Ms Caroline Gloor Scheidegger (Swiss DPA). The present document reports on the activities of the Group for this period.

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

Section 3 describes in more details one of the main achievements of the VIS SCG during the period 2015-2016.

Section 4 concludes the report by giving a brief general overview of activities to come in the next reporting period to the extent that they can already be anticipated.

2. Organisation of 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 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.

⁴ 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.

2.2. The supervision coordination meetings

In the period 2015-2016, four supervision coordination meetings took place in Brussels on the following dates:

- 26 March 2015;
- 8 October 2015;
- 15 April 2016;
- 23 November 2016.

The first meeting was held at the EDPS premises, while the three following ones took place at the European Parliament. As usual, these four meetings were organised back-to-back with the meetings of the SIS II SCG and the Eurodac SCG in order to reduce the financial, travel and administrative burdens and to ensure consistent and 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 the status of the VIS roll-out and other recent developments that impact data protection. This helps to ensure that the Group is always up-to-date on recent developments 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 quickly recapitulate the topics discussed and actions taken at these four meetings. A more detailed description of selected actions will follow in section 3 of this report.

Meeting of 26 March 2015

The meeting started with the election of Ms Vanna Palumbo as Chair and Mr Manuel Garcia Sanchez as Vice-Chair of the VIS SCG in accordance with the Group's Rules of Procedure. Representatives of the Commission and eu-LISA then updated the Group on the state of play of the VIS roll-out, the planned further roll-out, recent developments related to the quality of VIS data and the role of subcontractors. The Group also adopted its Work Programme for the period of 2015 to 2018, which identified several issues for further discussion and assessment by the Group in that period. The Group started to work on the first activity report of the VIS SCG and agreed on the content and format of the report.

Meeting of 8 October 2015

As usual, representatives of the Commission and eu-LISA updated the Group on the state of play of the VIS roll-out, the planned further roll-out and recent developments regarding the system, such as for instance the quality of VIS data. The Group adopted the Joint VIS Activity Report for the period 2012-2014 that includes a national chapter from each of the thirty countries using the VIS. The Group continued to work on three questionnaires aimed at checking at national level the list of authorities having access to the VIS, access to VIS for law enforcement purposes and on the exercise of data subjects' rights as regards the VIS. Finally, members of the Group updated their colleagues with information about their national inspections or other relevant developments.

Meeting of 15 April 2016

The Group invited the representatives of the Commission and eu-LISA. The topics discussed included the VIS Mail system, the VIS roll-out that ended in February 2016, the potential implications for the VIS of the Proposal for the establishment of an Entry/Exit System tabled by the Commission, the ongoing recast of the Visa Code, the overall performance of the VIS and latest developments related to the quality of data in the system. The Secretariat informed that the Report on Access to VIS data and data subjects' rights had been adopted by written procedure and the Group discussed the best ways to further disseminate the report. Members of the Group shared their national experience with regard to the implementation of Article 41 of the VIS Regulation, as regards the data protection audit of national systems that DPAs shall carry out at least every four years. Members also agreed to contact their national ministries in order to investigate further the cooperation with external service providers ('ESPs') in the visa application process in order to serve as basis for further analysis by the ESPs Subgroup.

Meeting of 23 November 2016

The Group invited representatives of the Commission to give a general presentation on Schengen evaluations, also focusing on VIS aspects of such evaluation. The Secretariat presented the first findings of the questionnaire on the implementation of Article 41 of the VIS Regulation as regards the data protection audit of national systems that DPAs shall carry out at least every four years. The Group adopted model letters to facilitate for data subjects the exercise of their rights to access, correct or delete their personal data recorded in the VIS. Members updated their colleagues with information about their national inspections or other relevant developments at national level. Finally, Ms Caroline Gloor Scheidegger from the Swiss DPA was elected as Vice-Chair of the VIS SCG.

3. 2015-2016: Access to the VIS data and data subjects' rights

The Report on access to the VIS and the exercise of data subjects' rights of February 2016 is based on answers to three questionnaires - related respectively to access to the VIS, on access to the VIS for law enforcement purposes and on data subjects' rights - from 22 countries using the VIS that were collected from end 2014 to early 2015. It reports on two important issues from a data protection perspective.

First, VIS data can be accessed for specific purposes by a number of different actors that are quite often located outside of the EU territory - for instance by authorities issuing visas, e.g. consulates of Member States, or by checkpoints at the Schengen border in order to verify the identity of visa holders, as well as for the purpose of identifying third-country nationals apprehended within the Schengen Area with fraudulent or without documents. Under certain conditions, the VIS may also be accessed for law enforcement purposes. Given the large number of authorities that can access the VIS and the different purposes for which they may use the system, access to this system is an issue of great interest to the VIS SCG as it raises many questions with data protection implications.

Second, granting rights to data subjects is an important aspect of data protection. Ensuring that data subjects can effectively access, correct and object to data held about them increases both the

transparency of data processing and the data quality for lawful processing, as well as helps to uncover unlawful processing. These considerations are all the more relevant in a field such as visa applications, where compliance with the legal framework is especially important given the adverse consequences that unlawful processing might have.

Based on the analysis of the replies to the three questionnaires, the Group formulated several remarks and recommendations. It notably recommended that competent national authorities, including law enforcement authorities, which had not yet done so, should develop and formally adopt internal policies regarding access to and use of VIS data as well as security and data protection policies encompassing VIS purposes.

Furthermore, as regards data subjects' rights, the VIS SCG took note of the global absence - or in a few Member States the very low number - of requests made by data subjects to exercise their rights of access, correction and deletion of their personal data stored in the VIS. The Group considered that this trend might be explained by data subjects' unawareness of the very existence of their data protection rights but also by the lack of information about the way to exercise them (e.g. to whom data subjects should address their requests?). Therefore, the Group concluded that there is a further need to raise awareness among visa applicants in this regard, and even more in cases where applications for a visa are rejected. The VIS SCG will further reflect on best practices to increase information provided to visa applicants about their data protection rights and the procedures to follow.

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 2017, including an on-site inspection of a consulate.

- Inspections

An inspection of the national VIS system was carried out by the Austrian DPA in 2015 and in 2016 respectively. In this context, the consulates in London and Istanbul were inspected. The Austrian DPA found that the controller and the processor overall complied with the relevant national and EU data protection rules and issued only two recommendations. The planned inspection in 2017 will also include a follow-up on the inspections of 2015 and 2016.

- Complaints

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

4.2. Belgium

- Overview: state of play and developments

The follow-up to the on-the-spot inspection of the national VIS system that was conducted in autumn 2014, notably at the Ministry of Foreign Affairs and at the Office of Immigration Affairs, is still ongoing. One of the main results of this audit is that the Office of Immigration Affairs has completely reviewed its IT system for the processing of personal data. This review is still ongoing and the Office regularly informs the Belgian DPA on the progress made.

- Inspections

The Belgian DPA has carried out an inspection in an embassy almost every year since 2012. The embassy of Ougadougou was inspected in 2016 and several recommendations were issued.

- Complaints

The Belgian DPA keeps statistics of all complaints that it receives. Up until now, the Belgian DPA has not received any complaints relating to VIS.

4.3. Bulgaria

- Overview: state of play and developments

Despite the full technical readiness and the successful evaluation, Bulgaria is not allowed to use the VIS due to the fact that the Council has not yet been able to decide on the full implementation of the Schengen acquis and the lifting of control at internal borders with Bulgaria and Romania. In this context, Bulgaria continues to use a national VIS for visa issuance and related checks of third country nationals.

With a view to synchronizing the information with regard to visa issuance refusals and refusals concerning the Schengen visa, Bulgaria has made a request to be admitted as an active observer of the VIS.

- Inspections

During the reporting period, inspections were carried out at the Consulates General of the Republic of Bulgaria in Saint Petersburg, Russian Federation and in Istanbul, Turkey and the Consular Mission of the Republic of Bulgaria in Astana, Kazakhstan. The main tasks were as follows:

- check the visa policy and the functioning of the VIS;
- identify the technical and organisational measures taken to protect personal data pursuant Article 23 of the Law for Protection of Personal Data (LPPD), and whether they correspond to the levels of impact and protection as set out in the Ordinance n°1 of 30 January 2013 on the minimum level of technical and organisational measures and the admissible type of personal data protection;

- check if personal data from the categories specified as “sensitive data” are processed;
- check if individuals whose personal data are processed are provided with the information required;
- check the actions taken by the Consulates General once the purposes for which personal data have been processed are achieved.

The inspections concluded with the issuance of an obligatory prescription to the data controller.

4.4. Croatia

- Overview: state of play and developments

From 21 to 26 February 2016, the evaluation of the Republic of Croatia on the application of the Schengen acquis in the field of data protection was conducted. On the basis of the evaluation team report, which did not contain any findings of non-compliance, the Council adopted an Implementing Decision setting out recommendations for removing the deficiencies identified during Croatia's evaluation as regards the fulfilment of the necessary conditions for the application of the Schengen acquis in the field of data protection (regarding the Croatian DPA as national supervisory authority for the protection of personal data, rights of data subjects, the VIS, Schengen Information System, the strengthening of public awareness and international cooperation). A significant part of the recommendations contained in the Council Implementing Decision have already been implemented in 2016.

It should be noted that the provisions of the Regulation on the Croatian Visa Information System ('CVIS') (Official Gazette 36/13) concerning the authority and obligations of the Croatian DPA as national supervisory authority are substantially in accordance with the provisions of the VIS Regulation.

- Inspections

In the period 2015-2016, the Croatian DPA performed planned inspection in relation to the processing of personal data in the VIS ('CVIS' - Croatian Visa Information System) in seven embassies and one general consulate of the Republic of Croatia. In 2015, the Croatian DPA conducted inspections in the general consulate in Istanbul and the embassy in Ankara. In 2016, the Croatian DPA conducted inspections in the embassies in Pristine, Moscow, Jakarta, Kiev, Peking and New Delhi.

The aforementioned inspections were conducted directly at the premises (on the spot) of the consular/diplomatic office (general consulate or embassy) by the Supervisory Team of the Croatian DPA and were related to the legal aspects and information security aspects, the compliance with the Schengen acquis and Schengen requirements and standards (especially in terms of physical and technical security and adequacy of space, devices and processes) and how data subjects' rights are implemented in practice. Some of these inspections included also visits to the visa centres run by ESPs, which act as data processors during the process of visa application and issuance. In conducting these inspections, the Croatian DPA did not find activities that were not in line with the applicable legislative framework. However several recommendations for improvement of security elements, data processing procedures and availability of information for data subjects were issued.

- Complaints

The Ministry of Foreign and European Affairs ('MFEA') received in 2015 one request from a data subject regarding the processing of his/her personal data in the CVIS. This request was handled through consultation and cooperation between the 'MFEA' (Visa department and DPO) and the Croatian DPA.

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

4.5. Cyprus

- Overview: state of play and developments

There have been no significant changes or developments with regard to the operation of the national VIS in Cyprus. The VIS Regulation and Decision 2008/633/JHA are not yet fully implemented in Cyprus.

- Inspections

No formal inspections have been carried out during the period 2015-2016. However, in November 2016, the Commissioner of the Cypriot DPA visited the Ministry of Foreign Affairs, where she was briefed on legal, technical and procedural aspects relating to the operation of the national VIS of Cyprus and, in particular, she was given explanations on how searches are carried out in the national STOP LIST for visa applicants.

- Complaints

No complaints have been received as for now in relation to the national VIS of Cyprus.

4.6. Czech Republic

- Overview: state of play and developments

The Czech DPA actively participated in activities connected to the supervision 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 in the VIS.

- Inspections

The Czech DPA performed inspections on the Czech embassies in Beijing and New York (specifically in 2016) in relation to the processing of personal data in the VIS. The Czech DPA did not find any problematic aspects. During the period 2015-2016, there was no audit of data controller (the last audit was performed in 2014 at the Ministry of Foreign Affairs).

- Complaints

The Czech DPA received precisely 67 inquiries in 2016. All those inquiries fell within the scope of competences of the Ministry of Foreign Affairs. The Czech DPA clarified the division of its powers in the visa sector and informed the applicants how to contact the Ministry.

The Czech DPA has not received any relevant complaint related to processing of personal data in the VIS.

4.7. Denmark

- Overview: state of play and developments

In February 2017, a Schengen Evaluation of Denmark on data protection was carried out by the Commission and Member States experts in addition to an observer from the European Data Protection Supervisor. The report of the Schengen Evaluation of 2017 has not yet been finalized.

- Inspections

The Danish DPA carried out two inspections on the processing of personal data related to the use of the VIS during the reporting period. Both inspections were carried out in 2016 and were initiated at the Danish Embassy in Dublin and at the Ministry of Immigration and Integration. These inspections are still ongoing.

- Complaints

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

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.

In these contacts, the EDPS has among others addressed eu-LISA's role as the management authority for the large-scale IT systems it manages in general and the division of responsibilities between it and the Member States, specifically when producing and sharing statistics based on VIS information.

- 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 September 2015 and 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. Follow-up was ongoing at 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 given to an access request.

In 2015 and 2016, the EDPS received five 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 1987/2006, the EDPS also provided them with information on how to exercise their rights regarding that system.

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

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 conducted an audit in 2015 at national level. A questionnaire was sent to the data controller. The basis of the questionnaire were: the VIS Regulation, Council Decision 2008/633/JHS and the Estonian regulation that stipulates the requirements for the national visa registry. The questionnaire was composed of six parts: data collecting, processing and retention, data subject's rights, access rights, logging, checking/control and data security.

An on-the-spot inspection was also conducted, during which the access to the VIS was supervised. During the inspection, the Estonian DPA oversaw the procedure of a person filing a visa application. The Estonian DPA observed how this person's data were collected and processed. Some recommendations and observations were made but regarding other requirements that derive from national law. Some recommendations were also made regarding new developments of the national system.

4.10. Finland

- Overview: state of play and developments

The VIS has functioned satisfactorily and no major problems or challenges have occurred. The Finnish DPA has not received any indication of shortcomings regarding data protection issues in the VIS.

- Inspections

The inspection pursuant to Article 41 (2) of the VIS Regulation started on 23 March 2015 and finished on 24 November 2015. During 2016, the implementation of recommendations made by the Finnish DPA following the inspection were monitored.

- Complaints

The Finnish DPA has not received any complaints regarding data processing in the VIS.

4.11. France

- Overview: state of play and developments

In France, the Ministry of Interior and the Ministry of Foreign Affairs and International Development share competences with regard to the common visa policy. The French visa information system consists of three data processing systems: the Global Virtual Network system of visas (RMV2), the VISABIO system and the N.VIS. The national IT applications RMV2 (“Réseau Mondial des Visas”, for visa application processing) and VISABIO (for identifying third country visa holders through their fingerprints) are used to exchange data with the N.VIS or to access its information. These three systems have been interoperable since the VIS was launched at national level, through the N.VIS exchange platform.

- Inspections

New controls have been initiated in 2015 and 2016 (two in 2015, and one in 2016), following up on recommendations from the VIS SCG and within the framework of the Schengen Evaluation. The main purpose of these controls was to assess the conformity of processing in accordance with the VIS Regulation, with a particular focus on data sharing, access and logging.

- Complaints

To date, the French DPA has received one complaint concerning the VIS, which is currently being investigated.

- Remarks

On the basis of the controls carried out, the French DPA submitted observations and recommendations to the aforementioned competent authorities, relating to the traceability of

access logs as well as to internal controls to monitor access rights and operating methods. The need to ensure the keeping of records pursuant to Article 34 of the VIS Regulation has been reiterated, and the obligation to take the necessary organisational measures related to internal monitoring to ensure compliance with the Regulation has been recalled.

The French DPA took note that the RVM2 information system, allowing access to VIS data, is being replaced by the project “France Visa”, for which it issued a positive opinion with reservations. This new “France Visa” information system, the first phase of which is to be deployed in the course of 2017, notably foresees logging all new entry, update, deletion and consultation of VIS data.

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 was completed during the reporting period. The VIS is currently being used by German consulates and embassies worldwide.

ESPs have been contracted in a variety of places, in particular places where very many visa applications have to be examined. ESPs are considered to enhance the efficiency and speed of the visa application process.

- Inspections

In 2015, the German DPA conducted a visit of the Federal Administration Office (Bundesverwaltungsamt - '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, in order to discuss the overall design of data flows in the visa application process and to gain an overview of the interaction of various databases. This included an inspection of VIS data flows and processing operations.

Later in 2015, the German DPA performed an on-the-spot inspection at the German embassy in Abu Dhabi and the German General Consulate in Dubai. The German DPA found some issues regarding an ESP and regarding internal procedures. A report with the findings of the German DPA's team was forwarded to the Ministry for Foreign Affairs. Follow-up meetings with representatives of the Federal Ministry for Foreign Affairs were also held.

- Complaints

The German DPA has received few complaints and access requests. Some complaints referred to the conduct of specific consular posts abroad.

- Remarks

The German DPA participated - on request of the Federal Ministry for Interior Affairs - in the Schengen Evaluation for Germany that took place in 2015, providing information on the scope of

the tasks of the German DPA in its capacity as national data protection supervisory authority according to the VIS Regulation and on the approach taken by the German DPA in this regard.

The German DPA was also involved by the Federal Ministry for Interior Affairs in answering a comprehensive questionnaire in the context of the VIS evaluation exercise done by the European Commission, which aimed at collecting information from Member States.

4.13. Greece

- Overview: state of play and developments

In May 2016, a Schengen Evaluation of Greece was carried out. In this context the application of VIS was also evaluated. The report of the Schengen Evaluation was delivered in September of 2017 with a few remarks concerning the VIS and the Hellenic DPA's supervision. The main recommendation refers to the untimely conclusion of the audit that the Hellenic DPA had initiated in 2015.

- Inspections

The Hellenic DPA started an audit of the VIS in November 2015 – just after the roll-out of the system had been completed. To this end, questionnaires were sent out to the data controller of the VIS, i.e. the Ministry of Foreign Affairs, and additionally an on-site audit was performed at the controller's premises. The audit is currently on the process of being finalised.

- Complaints

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

4.14. Hungary

- Overview: state of play and developments

The Hungarian DPA takes part in the VIS SCG as representative of Hungary since its foundation on 1 January 2012. During the cooperation, colleagues of the Hungarian DPA took part in meetings of the SCG and launched inspections at national level based on the questionnaires and other documents sent and prepared by the VIS SCG.

- Inspections

In 2013, the Hungarian DPA inspected the Office of Immigration and Nationality as part of the VIS and Eurodac inspection. The Hungarian DPA plans to carry out inspections in the near future again.

In addition, the Hungarian DPA usually performs data protection inspections regarding the VIS (and SIS) issues at Hungarian consulates in various countries. In 2015, no inspection was carried out. In October 2016, there were inspections at the Hungarian Embassy and Consulate in Rabat,

Morocco, regarding SIS and VIS issues. In April 2017, the Hungarian Embassy and Consulate in Skopje, Macedonia, was inspected regarding SIS and VIS issues.

- Complaints

The Hungarian DPA has not received any complaint regarding the VIS during the reporting period.

4.15. Iceland

- Overview: state of play and developments

A draft government regulation on visas that will replace the current regulation on visas from 2010 has been proposed. The current regulation contains provisions on the obligation to record data in the VIS system, but none on the security of the system, the rights of data subjects, the retention time, the security of data, the access and the supervision by the Icelandic DPA. In the draft regulation, there are fuller provisions regarding the VIS system. However, in its opinion on the draft regulation, the Icelandic DPA has highlighted that provisions on the rights of data subjects, retention time and data security are missing and need to be added to the text.

- Inspections

The Icelandic DPA intends to carry out an audit of the Icelandic part of the VIS system.

- Complaints

To date, no complaints have been received regarding the VIS.

4.16. Italy

- Overview: state of play and developments

The Italian DPA continued its checks on the implementation of VIS-related legislation. More specifically, the Italian Ministry of Foreign Affairs (MFA) was requested to provide updates on implementation of the data protection safeguards set forth in VIS legislation including the applicable security measures; to that end, the standard model developed by the VIS SCG was relied upon.

The above requests led the Italian DPA to provide technical and organisational guidance to the MFA in order to enhance lawfulness of data processing operations by implementing an automatic data deletion system upon expiry of VIS data retention periods. The information notice provided on the standard Schengen visa application form was fine-tuned. Moreover, the model contract prepared by the MFA for the contracts to be entered into between diplomatic and consular representations and external service providers was updated (see Annex X to the VIS Regulation), in that the latter providers will have to be appointed as data processors. It was also agreed with the MFA that an ad-hoc module on privacy and data protection rules would be added to their eLearning training course, and the DPA undertook to provide its support in this respect.

The data protection-related Schengen Evaluation of Italy took place in March 2016 and also included checks on VIS-related measures. Several recommendations were issued following the said evaluation, of which some were addressed specifically to the Italian DPA; an ad-hoc action plan was accordingly developed in order to remedy the relevant shortcomings.

One of the above recommendations concerned, in particular, completion of the audit activities referred to in Article 41 of Regulation 767/2008.

- Complaints

One complaint was lodged in the period 2015-2016 against both the MFA and the Italian Embassy in Islamabad. The complaint sought to obtain access to and possibly rectification or deletion of the personal data relied upon by the Embassy in rejecting an entry visa application. The complaint led to a no case to answer decision as it was found in the course of the relevant proceeding that the visa rejection was due to the missing authorisation by one of the Schengen Member State. However, such missing authorisation was actually only caused by a technical IT flaw in the exchange of the information, which had given rise to a false alert. The entry visa was subsequently issued by the Embassy and the complainant was informed of the reasons underlying the previous rejection decision. The Italian DPA decision on this complaint was adopted on 29 September 2016 and is available on its website.

4.17. Latvia

- Overview: state of play and developments

Within the period 2015-2016 an ongoing active work on structural changes of the Latvian DPA is carried out in order to effectively prepare for the General Data Protection Regulation, including ongoing work regarding the supervision of the VIS, SIS and Eurodac system. There has been no major development regarding the legislation that concerns the VIS.

- Inspections

The Latvian DPA is currently working on developing procedures on the inspections of the VIS system. The Latvian DPA has a close cooperation on VIS system supervision and inspections with institutions that are responsible for using the VIS system in Latvia.

After developing the procedures mentioned above, the supervision and inspections of the VIS system should be done more regularly and in a more effective way.

- Complaints

To date, no complaints have been received regarding the VIS.

4.18. Liechtenstein

- Overview: state of play and developments

During the period 2015-2016, the national VIS was operated without any fundamental changes regarding the software used. The competent authority, the Migration and Passport Office, still deals with a small amount of visa applications. The applications are gathered at Swiss consulates and then forwarded to the Liechtenstein authorities. The vast amount of visa processing at the competent authority are visa extensions. Liechtenstein is represented by other countries through Treaties resp. Exchanges of Notes, namely by Austria in Agram/Zagreb, Sofia, Tirana, Dublin, Kuala Lumpur based on a Treaty concluded on 1 March 2013, by Lithuania in Chicago based on an Exchange of Notes of 1 January 2017 and finally through an Exchange of Notes of 2 January 2017 by Hungary in Chisinau/Moldova, Minsk/Belarus and Chongqing/China. Visa applications therefore are dealt with by the countries mentioned above independently based on Article 8 (4) (d) of the Visa Code.

- Inspections

No formalized controls or audits have been carried out during the period covered by this Activity Report. However the Liechtenstein DPA is regularly in contact with the authorities having access to VIS data in order to check compliance of their use of data.

- Complaints

To date, no requests for information, deletion and correction were claimed neither at the Migration and Passport Office, nor at the Liechtenstein DPA.

4.19. Lithuania

- Overview: state of play and developments

There were no problems reported neither by the Ministry of Interior of the Republic of Lithuania and the Ministry of Foreign Affairs of the Republic of Lithuania, nor by data subjects.

- Inspections

The Lithuanian DPA carried out three inspections regarding access to the national VIS by law enforcement authorities (Police department under the Ministry of Interior of the Republic of Lithuania, State Border Guard Service at the Ministry of Interior of the Republic of Lithuania, Financial Crime Investigation Service under the Ministry of Interior of the Republic of Lithuania) during the period 2015-2016. After these inspections, no violations were detected. In 2015, the Lithuanian DPA started an inspection at the Migration Department under the Ministry of Interior of the Republic of Lithuania.

- Complaints

The Lithuanian DPA has not received any complaints regarding data processing in the VIS in the period 2015-2016.

4.20. Luxembourg

- Overview: state of play and developments

The Luxembourgish law of 2 August 2002 on data protection provides for two supervisory authorities:

- the general data protection authority, namely the “Commission nationale pour la protection des données” - the Luxembourgish DPA;
- the specific supervisory authority – “Article 17”. This supervisory authority is set up by article 17 of the data protection law. It has exclusive competence to monitor and supervise the processing of personal data carried out by the Police force, the Customs authority, the Intelligence Service and the Army. It is made up of three members, namely the Attorney General or his deputy who acts as its chairman and two members of the Luxembourgish DPA.

As a consequence two different supervisory authorities are competent for the monitoring of the use of the VIS data. The Luxembourgish DPA is competent for supervising the access to VIS data by the Ministry of Foreign and European Affairs, the embassies and the consulates, whereas the supervisory authority “Article 17” is competent for supervising the access to VIS data by the law enforcement authorities.

At the end of 2016, the Luxembourgish government stated its intention to merge the “Article 17” Supervisory Authority with the National Data Protection Commission, given the new data protection Regulation 2016/679 and Directive 2016/680.

The evaluation of Luxembourg on the application of the Schengen acquis in the field of data protection was carried out from 25 to 29 January 2016 according to the new Schengen Evaluation procedure. The Report related to the evaluation was adopted at the Schengen Committee meeting of 6 October 2016.

- Inspections

No formalized controls or audits have been carried out during the period covered by the present Activity Report. However, both supervisory authorities have held several meetings with the authorities having access to VIS data in order to prepare the Schengen evaluation.

The Luxembourgish DPA had planned to carry out the audit provided for in Article 41(2) of the VIS Regulation during the last quarter of 2016. Due to unforeseen internal changes within the DPA, the audit had to be postponed until the first half of 2017.

- Complaints

Nor the Luxembourgish DPA neither the supervisory authority “Article 17” have received any complaints during the period 2015-2016 concerning VIS related matters.

4.21. Malta

- Overview: state of play and developments

VIS operation

During the period 2015-2016, the VIS operation for Malta was relatively smooth and no major issues or disruptions were encountered with regards to the overall operation of the system, both from a technical point of view and also at an organizational level. Nevertheless, there were some minor technical problems regarding biometric checks at the border which were generating an error, thus affecting both the timeliness and quality of the data in the Central VIS. On such matter, the Maltese DPA gave specific recommendations, especially in order to ensure that communication about technical glitches is ongoing between the Immigration Authorities (and all other users) and the Competent Visa Authority. It was also emphasised that error logs should be monitored regularly. In addition, and also affecting data quality, there was a problem concerning missing photographs, which occurred due to technical issues. Both matters have been duly followed up by the Competent Visa Authority.

Legislation

There were no specific legislative developments during the period 2014-2016.

SISII/ VIS National Stakeholders Working Group

In December 2015, on the initiative of the Data Protection Commissioner, a working group for SISII/VIS stakeholders was set up at national level. The scope of this working group is to serve as a national platform where the relevant stakeholders meet on a regular basis, identify and discuss any problematic areas, and follow up pending issues concerning SISII and VIS. The working group is made up of representatives from the Data Protection Authority, the Police (SIRENE, N-SIS, and Immigration), the VISA Authorities (Ministry for Foreign Affairs – Information Management Unit and Central Visa Unit), the Refugee Commissioner, the Citizenship & Expatriates Directorate, and also representatives from the Ministry of Home Affairs and the Ministry for Social Dialogue and Civil Liberties. Following an introductory meeting in December 2015, the group met on another six occasions in 2016.

Schengen Evaluation

In September 2016, Malta underwent its first Schengen data protection Evaluation under the new regime which also incorporates VIS as part of the visit. Apart from the presentations delivered by the Data Protection Authority and the Police, which were followed by onsite visits at the SIRENE, N-SIS Office and N-SIS server room, the evaluation also included a full day specifically on VIS, which consisted of presentations by the Competent Visa Authority, and

onsite visits to the Central Visa Unit and the N-VIS server room. The evaluation report is not yet finalised. However, it is envisaged that this report will be presented to the Maltese delegates during the Schengen Committee meeting in July 2017.

- Inspections

In 2016, the Maltese DPA carried out a series of inspections in relation to SIS II and VIS. Of particular relevance to the processing of personal data as part of the Visa procedure were the inspections carried out at the Air and Sea Border Controls, the N-VIS, the Consular Post in Tunis, and the Immigration Appeals Board. The Maltese DPA was generally satisfied with the level of data protection. However some recommendations were issued. Common recommendations were issued on the retention of personal data concerning visas, especially manual application forms. The Maltese DPA provided guidance on the procedure adopted by the Visa Authority and Visa issuing bodies (e.g. Consular Posts, Borders, Central Visa Unit) to ensure the timely destruction of manual forms, once that the data is deleted from the system, either upon expiration of the five years' time frame or due to advance deletion. Additionally, specific recommendations were issued with regards to the retention of alphanumeric data entered in the national platform used for VIS (MTVISA), and also biometric data retained by the ESP, which was considered excessive. Other general recommendations were issued on technical matters, such as the procedures in dealing with inactive or expired user accounts for VIS and data quality controls which should be carried out on a regular basis. The Maltese DPA intends to conduct follow-up activities on such recommendations, also keeping into consideration additional recommendations which may be issued in the Schengen Evaluation Report.

- Complaints

No complaints were received during the period 2015-2016.

4.22. Netherlands

- Overview: state of play and developments

In accordance with the evaluation and monitoring mechanism to verify the application of the Schengen acquis, a Schengen Evaluation of the Netherlands on data protection (Council Regulation (EU) No 1053/2013 of 7 October 2013) was carried out by Commission and Member States experts in September 2015. Data protection on the VIS was part of this.

In November 2015, the Dutch DPA has received the outcome of the VIS audit Article 41(2) of the VIS Regulation from the Minister of Foreign Affairs (MFA) The Dutch DPA is kept informed by the key players of the necessary follow-up measures to ensure compliance with the legal regulations.

- Inspections

The Dutch DPA has carried out in 2015 a SIS II-related inspection by the Ministry of Foreign Affairs of four consulates. The inspection was carried out solely through questionnaires.

A joint inspection of SIS II and VIS of two consular posts is foreseen for the end of 2018.

- Complaints

No complaints have been received during the reporting period. In 2016 there was only a request from another DPA to check upon a visa refusal by the Netherlands.

4.23. Norway

- Inspections

There was no inspection of the national VIS-system carried out by the Norwegian DPA in the reporting period 2015-2016.

- Complaints

The Norwegian DPA has received no complaints during the reporting period.

4.24. Poland

- Overview: state of play and developments

Between 2015 and 2016, the Polish DPA carried out 20 inspections.

- Inspections

The Polish DPA carried out eight inspections in 2015 and twelve in 2016. The following authorities were controlled: the Ministry of Foreign Affairs, the National Border Guard Headquarters, Border Guards units, the Office for Foreigners, the Mazowieckie Province Office, the National Police Headquarters, county and provincial Police headquarters and consular sections of the Embassies of the Republic of Poland.

In general, the results of the inspections were satisfactory but in some cases the following shortcomings were found. During the inspection carried out at the Ministry of Foreign Affairs, it was noted that the documentation describing the data processing does not take into account information required by Polish law. In some consular sections of the Embassies of the Republic of Poland, the Visa Application Centres were not included in the documentation describing the data processing.

During the inspection carried out in 2016 at the Office for Foreigners it was found that the Head of the Office for Foreigners does not exercise the right resulting from Article 5 the Act of 24 August 2007 on the participation of the Republic of Poland in the Schengen Information System and the Visa Information System. As it was pointed out, there are no tasks for the Head of the Office which accomplishment would cause the need to enter data into the VIS. As a result of these findings, the Polish DPA requested the Minister of the Interior and Administration to consider rectification of the list of competent authorities having access to the VIS and amendments in the Act on the participation of the Republic of Poland in Schengen Information System and Visa Information System. The result of this change would be to limit the access of the Head of the Office for Foreigners to VIS only for the purpose of consulting data.

- Complaints

No complaints 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

There were no significant developments related to the VIS during the period 2015-2016. Law enforcement authorities do not have access to the VIS under Decision 2008/663/JHA.

- Inspections

Following the audit of the VIS started in 2014, the Portuguese DPA followed its inspection actions in the field of the data subjects' rights provided by the VIS data controller and by the Ministry of Foreign Affairs.

- Complaints

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

- Remarks

Considering the obligation of the Member States laid out in Article 41 (3) regarding 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 the VIS Regulation.

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 Romanian DPA decided to continue the *ex officio* inspections to the diplomatic missions and consular posts of Romania in order to verify the compliance with the provisions of Law no.



677/2001 within the processing of personal data carried out, in particular with regard to respect for the rights of the data subjects and the security measures implemented.

The Romanian DPA issued recommendations on the adequate information of data subjects, according to Article 12 of Law no. 677/2001 in all situations in which personal data is processed.

- Complaints

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

The Romanian DPA has not received any complaints related to processing of personal data in NVIS.

- Remarks

The Ministry of Foreign Affairs submitted the document containing the minimum security requirements concerning the protection of personal data within NVIS to the Romanian DPA, and series of recommendations were issued. The document is part of the Manual of consular procedures and is available to the diplomatic missions and consular pots of Romania.

4.27. Slovak Republic

- Overview: state of play and developments

During the period 2015-2016, the national VIS was operated in routine performance without any fundamental changes in the application. Since 2011, the visa departments of each embassy/consulate have been connected to the Central VIS in accordance with the timetable of the European Commission. In the present time, 64 embassies/consulates are connected.

- Inspections

During the period 2015-2016, the Slovak DPA performed inspections of the VIS at the embassies/consulates in Russia, Albania and Belarus. The Slovak DPA found some deficiencies at the Slovak Embassy in Belarus, where not all best practices related to measures to ensure security at entrance area where personal data are processed were fulfilled.

- Complaints

There were no complaints during the period 2015-2016.

4.28. Slovenia

- Inspections

In 2016, the Slovenian DPA carried out two inspections regarding data processing in the VIS, namely at the Slovenian consular post in Podgorica and Zagreb. No irregularities were found. A general inspection at the Ministry of Foreign Affairs (the data controller of VIS) is planned for 2017.

- Complaints

The Slovenia DPA has received no complaints during the period 2015-2016.

- Remarks

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

4.29. Spain

- Overview: state of the play and developments

Following the roll-out of the VIS initiated by the EU Commission in 2015, the action plan of the Spanish DPA consisted in the deployment of the VIS data protection audit system within the coordinated supervision model. The supervision activities focused on the analysis of national authorities with access to the system, including access to the system for law enforcement purposes as well as the exercise of the rights recognized to data subjects. In the same way, the activities of the companies in charge of the collection of the documentation of visa applicants, acting as ESPs of the diplomatic representations of the Kingdom of Spain abroad have been analyzed. The supervision of the VIS (and the SIS II) system has been included as a priority in the Strategic Plan of the Spanish DPA for the period 2015-2019.

- Inspections

An inspection of the VIS began in June 2016 and went throughout 2017. The inspection of the VIS was broken down into different activities aimed at the Central VIS system as well as a specific ones for each of the consulates inspected (Casablanca and Moscow).

The Spanish DPA has agreed with the institutional stakeholders involved in the running of the VIS system a new continuous audit procedure for the next four years' period. That procedure will still include visits to consulates abroad. The next consulate to be visited will most likely be China, in the first semester of 2018.

- Complaints

No complaints were lodged during the period 2015-2016.

- Remarks

The roll-out of the VIS initiated in 2015 has paved the way for the Spanish DPA for the implementation of multiannual VIS supervision at the national level with the designing of an inspection plan in the framework of the a new supervision model that includes an multiannual audit plan for the VIS system.

The evaluation system combines the information requirements with on-the-spot face-to-face visits at the Ministry of Foreign Affairs, consular offices and bodies whose tasks include the granting or issuing of visas. The results of this evaluation include both the evaluation itself and recommendations for improvement that are in turn subject to follow-up in accordance with the EU commitments of the Kingdom of Spain regarding the establishment of the area of freedom, security and justice.

4.30. Sweden

- Overview: state of play and developments

The Swedish Migration Authority is the responsible authority for VIS in Sweden. The Swedish DPA has closely followed the implementation of VIS in Sweden since the very beginning and carried out some first inspections in 2012 and 2014.

- Inspections

In 2015, the Swedish DPA initiated a larger supervision project regarding the VIS. It started with a general field inspection at the Migration Authority where the general routines and the handling of VIS at central national level was checked. The Migration Authority described access and authorization rules and routines, IT security matters, the VIS flow chart as well as experiences from some of the consular posts. The inspection was closed without remarks.

As a follow up of this inspection, the DPA then carried out two inspections at the Swedish Embassies in Moscow and Addis Abeba later in 2015. The inspection in Moscow also involved a check of the service provider agreement with an external service provider and their procedures regarding the VIS. The inspections were closed without remarks but with recommendations on further data protection training of staff.

In 2016, we initiated a desk inspection towards the Police to check their access to VIS for law enforcement purposes. At the time, the Police had not yet had any such access.

- Complaints

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

4.31. Switzerland

- Overview: state of play and developments

At national level, the Swiss DPA was in contact with the data protection officers of the Swiss State Secretariat for Migration (SEM), the Swiss federal Department of Foreign Affairs (FDFA) and the Federal Office of Police fedpol. During the period 2015-2016, the national VIS called ORBIS in Switzerland worked without any major data protection incident. At European level, the Swiss DPA attended three of the four coordinated supervision meetings and answered all questionnaires of the VIS SCG.

- Inspections

As the Swiss DPA had already carried out different inspections at Swiss consulates, no further inspection took place neither at Swiss consulates, nor at the SEM concerning the national VIS in 2015 and 2016. As the Swiss DPA was accompanied by the data protection officer of the the FDFA during these earlier inspections, the data protection officer made sure to implement the recommendations where appropriate at other Swiss consulates.

- Complaints

The Swiss DPA received no complaints in 2015 and 2016.

- Remarks

The Swiss DPA plans to carry out an inspection of the national VIS at the Swiss SEM as soon as possible.

5. What to expect next

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

- Reporting on the use of ESPs for the processing of visa applications;
- Developing a security audit framework;
- Checking how national authorities are ensuring training staff of authorities having a right to access the VIS on data security and data protection rules.

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.