



EMN Ad-Hoc Query on VIS in return matters (part 1: copies of documents, access to VIS and fingerprints)

Requested by Bram DEVOS on 6th April 2017

Return

Responses from Belgium, Blocked / Unknown, Croatia, Czech Republic, Estonia, Finland, France, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Slovak Republic, Sweden (14 in total)

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

Background information:

On 14 October 2016, the Commission reported to the European Parliament and the Council on the implementation of Regulation (EC) N° 767/2008 establishing the Visa Information System (VIS). The report stressed that, while the VIS is instrumental in assisting in the identification and return of illegal immigrants, its use in the return procedure has so far been rather limited and that recent trends indicate an increased need to use this instrument which provides a proof of identity necessary in a return procedure. The report further suggests how the VIS could possibly play a much more significant role for return purposes.

Using the VIS within the framework of forced return has also proved challenging for the Belgian Immigration Office which faces some practical and juridical problems in this context. For this reason, the Belgian authorities would like to find out if other MS experience the same kind of problems, and how they possibly address them.

On 18 March 2016 an ad-hoc query on ‘MS experiences with the use of the VIS for return purposes’ was launched by the Commission (2016.1042). The current ad-hoc query complements the ad-hoc query of the Commission, because it focuses more on the operational and practical aspects of the use of VIS in return matters. These aspects are also not included in the scope of the 2017 EMN Study on ‘Challenges and practices for establishing applicants’ identity in the migration process’.


Please note that the ad-hoc query is divided into two parts due to the amount of information asked.



Questions




1. Copies of documents: At this time the VIS Regulation doesn’t provide for the storage of scanned pages of the passports in the VIS or making them available to other Member States. Based on the Belgian experience, many embassies of third countries claim that a VIS-hit as such is not enough for identification and return purposes and ask for copies of the passports. Yet, not all MS embassies or consulates in non-EU countries, which handle visa applications, store a copy of the passport to send to the asking Member States. After all, it’s not provided by the VIS Regulation that information can be exchanged among the Member States. (a) Which countries of origin state that a VIS-hit is not enough, and systematically or regularly inquire after copies of the travel documents? (b) Which solution(s) have you already reached with these countries of origin to resolve this problem? (c) In which third countries do MS embassies/consulates not store copies of passports? (d) Which solution(s) have you already reached with these embassies/consulates to resolve this problem?
2. Access to VIS: (a) Do the services responsible for identification for the purpose of return and return within your country also have access to the VIS? Yes / no (b) If yes, do these services use the information in the context of identification and return? (c) Which practical, legal and juridical problems are inhibiting the access and / or use? (e.g. lack of legislative framework, data protection, non-cooperation of the third countries, lack of essential information (which information), quality of the information (which issues), ...)



3. Fingerprints: Article 13.2 regarding biometric identifiers of the Visa Code (Regulation EC No 810/2009) states that fingerprints have to be taken of all visa applicants at the time of submission of the first application. (a) Do you experience hereby problems? Yes / no (b) If yes, what kind of problems? (e.g. data protection, quality of the fingerprints, non-acceptance of the fingerprint results by the third countries, non-cooperation of the third countries, no link with the passport of the TCN, ...)



Responses


	Country	Wider Dissemination	Response
	Belgium	Yes	<p>1. (a) Third countries are only obliged to accept a VIS hit as such on the basis of (certain) EU readmission agreements, but there is no such obligation for most third countries. Belgium does not have a readmission agreement with for example Morocco, Tunisia, Burundi, Guinea, Bangladesh, Suriname, Jamaica and India. We also experience problems with countries that do not have national registers or databases that can be used for comparison. Other countries have national registers and databases, but they are of poor quality. (b) None (c) Belgian embassies / consulates store always a copy of the passport. These copies can be requested by the Belgian Immigration Office or authorities of other MS in the framework of migration procedures. (d) N/A since Belgium stores copies.</p> <p>2. (a) Yes (b) Yes. VIS hits are used for identification issues; information of visa application as well as photo and fingerprints can be transmitted to the third country. The Belgian Immigration Office will request through Belgian embassy or directly to embassy / consulate of MS to obtain copy of passport, which will be added to the identification request. (c) N/A</p> <p>3. (a) Yes (b) When a visa application is lodged, it is not always clear whether fingerprints were already taken during the last five years (in which case according to Art. 13.3 of the Visa Code it is in principle not allowed to take fingerprints again). A solution will hopefully be provided by the modification of the VIS-regulation.</p>


	Blocked / Unknown	Yes	<p>1. Hungary suggests that the data holder page of the passport shall be stored in VIS system. Hungary uses the data from the VIS system (e.g. passport number – it is a supporting tool for identification). In practice TCNs arriving or residing in Hungary illegally usually did not have any visa application before, therefore it is rare to have cases when data can be excerpted from the system.</p> <p>2. In the course of travel documentation procedure Hungary forwards the copy of passport to the Embassy of country of origin, if available. a) and b) The authorities involved in return cases have access to the VIS system in order to identify the foreigner to be returned. c) There are no legal and practical and juridical hindrances concerning the access and the use of the system. There is a formal legal base on data protection. Statistics: There is no statistics on VIS hits.</p> <p>3. Not any experience.</p>
	Croatia	Yes	<p>1. Croatia is not a part of the Schengen Area. Further to that, Croatia does not follow common rules in relation to VIS within the Schengen Acquis. However, since March 2013 those applying for visas to travel to Croatia are required to provide their biometric data (digital photograph and finger scans). At the same time, collected data can be passed over to the other states (that Croatia has signed Readmission Agreement or the ones agreeing to use data for this reasons only) is with purpose of providing identity of the person and/or in case the person is in the process of return.</p> <p>2. No</p> <p>3. No</p>
	Czech Republic	Yes	<p>1. a) N/A b) N/A c) CZ consulates store the copies of the passports systematically in all destinations. d) N/A</p>

			<p>2. a) + b) The access to VIS is generally provided to the authorities that are responsible for verification of the identity and identification of third country nationals. The information gained in this regard can be then used for the return purposes. c) N/A</p> <p>3. a) YES b) We experience the same problem as BE. When a visa application is lodged, it is not always clear whether fingerprints were already taken during the last five years (in which case according to Art. 13.3 of the Visa Code it is in principle not allowed to take fingerprints again).</p>
	Estonia	Yes	<p>1. (a) Although in Estonia it would be possible to use VIS hit as a proof of person's identity and possible citizenship, in practice there have not been significant amount of cases. Therefore, Estonia does not have the experience on refusals received from the third countries related with use of VIS hits. (b) As we have not identified the problem there have been no solutions introduced. (c) We do not have experience with other MS embassies/consulates in this matter. All Estonian embassies and consulates fulfil the requirement for storing passport copies. (d) We have not identified described problem.</p> <p>2. (a) Services responsible for identification of TCN-s for the purpose of return in Estonia have Access to the information stored in VIS. (b) Services responsible for identification of TCN-s for the purpose of return in Estonia use all relevant information and sources available for gathering information including information stored in VIS. (c) No problems identified</p> <p>3. (a) No (b) No problems identified in relation to use of VIS in return matters.</p>
	Finland	No	
	France	No	

	Ireland	Yes	<p>1. The VIS Regulation 767/2008 constitutes a development of provisions of the Schengen acquis in which Ireland does not take part. Ireland does not participate in the VIS Regulation and is not bound by it or subject to its application.</p> <p>2. n/a</p> <p>3. n/a</p>
	Latvia	Yes	<p>1. (a) The Republic of Latvia does not use VIS hit as such as a proof for readmission of third country nationals. So there is no experience on refusals received from the third countries related with use of VIS hits. In case if the third country national does not have travel document in a stock, but at the disposal of the competent authorities responsible for return there is a copy of his/her travel document it is used for submission to the third country for identification purposes either within the ordinary procedure (a copy is submitted to the Embassy/consulate of the appropriate third country) or within the readmission procedure (a copy is submitted to the Embassy/consulate or directly to the competent authority of the appropriate third country). In the request submitted to the third country the competent authority responsible for return of foreigners can indicate information gained from VIS if it can approve facts (border crossing fact or nationality of the person) upon which the decision on readmission is to be taken by the third country. b) Taking into account that Latvia has not experienced such cases there were no necessity to find solutions. c) The requirement on storing copies of passports is fulfilled by all Embassies/consulates of Latvia also those that are in the third countries. d) Latvia has not experienced such problems.</p> <p>2. (a) Latvian authorities responsible for return issues, including identification of foreigners, obtaining of travel documents, as well as organisation and fulfilment of returns of foreigners have access to VIS. b) The competent authorities of Latvia use information obtained or that they have at their disposal for identification of foreigner and his/her return to the third country. c) There are no practical, legal and juridical problems inhibiting the access and/or use of VIS identified by the competent authorities of Latvia.</p>

			<p>3. Latvia fulfils the provisions of Article 13.2 of the Visa Code and takes fingerprints of all visa applicants at the time of submission of the first application. Taking into account that Latvia does not have experience related with use of fingerprints from VIS for return cases, there are no problems identified in this field.</p>
	Lithuania	Yes	<p>1. Embassies and consulates operating in post-USSR territory where the majority of visas are being issued do not keep copies of passports. Embassies operating in Asia and Africa do keep these documents. However, undocumented foreigners being returned do not come to Lithuania with visas. Therefore Lithuania has no experience in this regard.</p> <p>2. Yes, technically services responsible for identification and return could have access to VIS. Officials at the border check points have the possibility to use VIS. VIS is usually used in order to ascertain if the purpose of travel corresponds to the stated purpose at the border. However, for identification and return procedures VIS is not used since all undocumented foreigners come without visa.</p> <p>3. Fingerprints are being taken during the visa application process.</p>
	Luxembourg	Yes	<p>1. (a) Which countries of origin state that a VIS-hit is not enough, and systematically or regularly inquire after copies of the travel documents? Luxembourg has only had few cases which were submitted to third countries and all of them were cases coming from countries of North Africa. But for them the VIS result and even a copy of the passport are not enough and the authorities have anyway to proceed by the normal identification procedure by sending them the fingerprints. (b) Which solution(s) have you already reached with these countries of origin to resolve this problem? None (c) In which third countries do MS embassies/consulates not store copies of passports? As Luxembourg doesn't have a diplomatic representation in every third country other MS are issuing the visa in our name. If this would be the case we can request the file with all the necessary data to our Passport Office which is responsible for visas. And normally this file contains a copy of the passport of the third country national. (d) Which</p>

			<p>solution(s) have you already reached with these embassies/consulates to resolve this problem? N/A</p> <p>2. a) Do the services responsible for identification for the purpose of return and return within your country also have access to the VIS? No, only the Judicial Police and the police at the airport have access to the VIS. (b) If yes, do these services use the information in the context of identification and return? But if an illegal third country national is apprehended by the police, the Return Department of the Immigration Directorate requests the Judicial Police or the Police at the airport to do the verification in the VIS and if the result is positive, the information is used for identification purposes. (c) Which practical, legal and juridical problems are inhibiting the access and / or use? (e.g. lack of legislative framework, data protection, non-cooperation of the third countries, lack of essential information (which information), quality of the information (which issues), ... None</p> <p>3. (a) Do you experience hereby problems? Yes / No (b) If yes, what kind of problems? (e.g. data protection, quality of the fingerprints, non-acceptance of the fingerprint results by the third countries, non-cooperation of the third countries, no link with the passport of the TCN, ...) N/A</p>
	Netherlands	No	
	Slovak Republic	Yes	<p>1. Slovak Republic believes that IT system VTSMail provides enough space and functionality for exchange of requested information. Storing of fingerprints together with photo of requester represents sufficient basis to identify the person. So far the Slovak Republic has not contacted any embassies to obtain a copy of travel document into which a visa was issued. In case that a person was screened in VIS with a positive result, this wasn't the only proof confirming identity, based on which the Slovak republic requested embassy of a third country to issue a travel document. According to the information received from detention facility for foreigners (which usually secures temporary travel documents for foreigners), the Slovak Republic has not approached embassy of a third country with a request to issue temporary travel document solely based on the information of identity received from IS VIS.</p>

			<p>2. a) Executive departments, which issue expulsion decisions, have access to VIS and ability to screen by fingerprints. Departments securing return operations have access to VIS without ability to screen by fingerprints. b) Yes. c) Slovak Republic does not record any problems related to restricting access or using the system.</p> <p>3. a) No. b) N/A.</p>
	Sweden	Yes	<p>1. a. The Swedish Migration Agency does not currently use VIS hits as evidence for readmission of third country nationals and therefore does not have experience of which third countries consider that a VIS hit is not sufficient proof of identification for return purposes. It is, however possible to use a copy of the passport submitted in connection with a visa application for identification and return purposes. b. N/A - see answer to question 1 (a) above c. All Swedish embassies/consulates store hard copies of all passports submitted in connection with visa applications for a minimum of 2 years. Five of Sweden's embassies accept e-applications for visas and in these cases a scanned copy of the passport is usually also stored in a centralised database. Also, some embassies use an external service provider for the submission of visa applications and scanned copies of passports in these cases are also stored in a centralised database. d. N/A - see answer to question 1 (c) above</p> <p>2. a. No, the units responsible for return within the Swedish Migration Agency do not have access to the Visa Information System. Searches are carried out in the system at the very beginning of the process, at the application stage, rather than at the return stage. If a VIS hit is obtained then we have the possibility to obtain a copy of the person's passport at an early stage in the process. This can later be used in connection with return, if necessary. b. N/A - see answer to question 2 (a) above c. See answer 2 (a) above. Searches are carried out at an early stage in the process rather than in connection with return.</p> <p>3. a. Yes b. Sweden experiences the same problem described by Belgium. When a visa application is lodged, it is not always clear whether fingerprints have already been taken during the previous five years. The difficulty is that we need a copy of the visa in order to trace the fingerprints which were provided in connection with the previous application. If the person</p>

			cannot produce a copy of the visa then we cannot trace the previous application or the fingerprints.
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