



## **EMN Ad-Hoc Query on VIS in return matters (part 2: type D visas and statistics)**

Requested by Bram DEVOS on 6th April 2017

### **Return**

Responses from Austria, Belgium, Blocked / Unknown, Croatia, Czech Republic, Estonia, Finland, France, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Slovak Republic, Sweden, Switzerland, United Kingdom (17 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. Type ‘D’ visas: National visas of ‘D’ category (long-stay visas) are, in the current legal framework of the VIS Regulation, not being inserted into the VIS. Those visas are delivered within the framework of national use (for family reunification, work, study...). But when a third-country national loses his/her residence permit (withdrawal, non-renewal, material loss), he/she might travel to another MS, where he/she can stay illegally or apply for asylum. It might then be interesting to find out through VIS whether this TCN applied for or obtained previously a staying permit in another MS. This must not necessarily mean that this TCN will have to be readmitted by the other MS, but this information could help the identification procedure towards the third country. (a) Have you experienced similar cases? (e.g. former TCN students; TCN workers in one MS, who apply for asylum in another MS or use this other MS as a transit country to go back to that MS where they previously had a staying permit; TCN who have applied for long stay visa, but which was rejected, and then applied for asylum in another MS; ...) If yes, please give examples. (b) According to the meeting report of the Visa Committee Meeting of 16 January 2017, the following aspects concerning type D visas need to be clarified: 1) the validity of those visas (max 1 year, but many MS directly issue residence permits which can go up to 5 years and are renewable); 2) the possible inclusion of fingerprints; 3) the different purposes of issuance; 4) the retention period (most MS prefer VIS retention of 5 years, but questions were raised when the MS first issues a type D visa, followed by one or two






residence permits); 5) the scope of data to be included in the VIS: the various stages of the decision making process, or final decision only (the latter implying that only issued visas would be included, but not visas who are refused, revoked, etc.);6) type D visa data with the Entry-Exit System (EES) calculator (since VIS will be interoperable with the EES);7) the possible linking with the Schengen visas and, related to that, the retrieval of the decision history (revocation / annulment included);8) whether the same business rules as for the Schengen visas should apply;9) the capacity of the system to withstand such a significant increase in volume, as well as the costs that this would incur. What are the three major aspects that needs to be arranged primarily, and why?



2. Statistics: When answering the following questions, please give separate numbers for 2016 (whole year) and for 2017 (until 28/02):(a) How many VIS-hits did you receive in total (not only VIS-hits regarding return, but all)? (b) How many of these VIS-hits were usable in the framework of identification and return? (c) Based on how many of these VIS-hits did you get a laissez-passer or did the VIS-hit (as one of the supportive elements) help you to obtain a laissez-passer? (d) How many persons have eventually been removed with a VIS-hit?



**Responses**



	Country	Wider Dissemination	Response
	Austria	No	
	Belgium	Yes	<p><b>1.</b> (a) Yes, especially with international students. We already had several cases of former TCN students who were previously studying in another MS, and afterwards, once there studies were finished or their visa were not renewed or cancelled because of bad results during the studies, who applied for asylum in Belgium, without having mentioned their previous staying in another MS (e.g. TCN students from India, Bangladesh, Pakistan ...). (b) - 3) The different purposes of issuance. Not only D-visas, but also ‘regular’ residence permits would be useful (see also feasibility study foreseen by the next EU Action Plan on return). In fact a database for every kind of long staying visa, regardless the purpose wherefore it has been issued, could be interesting. This could also help to determine whether TCN are really irregular migrants or not (sometimes they pretend to be irregular migrants, mainly when they are arrested because of criminal activities; in those cases we could assess whether they have a right to stay in another MS or whether we should request to the other MS to revoke the staying permit, so that the</p>

			<p>concerned TCN can be removed once released from prison). - 2) The possible inclusion of fingerprints. We believe fingerprints should always be required, since biometrics are according to us the most reliable means of identification for a TCN. - 8) Whether the same business rules as for the Schengen visas should apply. In principle same business model as for C-visas (mutatis mutandis), e.g. refused application should also be included in the database.</p> <p>2. (a) How many VIS-hits did you receive in total? (not only VIS-hits regarding return, but all)? 2016: Jan – Aug 1781, Sept - Dec not yet available 2017 (28/02): Not yet available (b) How many of these VIS-hits were usable in the framework of identification and return? 2016: N/A 2017 (28/02): 13 (c) Based on how many of these VIS-hits did you get a laissez-passer or did the VIS-hit (as one of the supportive elements) help you to obtain a laissez-passer? 2016: N/A 2017 (28/02): 1 (d) How many persons have eventually been removed with a VIS-hit? 2016: N/A 2017 (28/02): 1</p>
	Blocked / Unknown	Yes	<p>1. Not any experience.</p> <p>2. Not any experience.</p>
	Croatia	Yes	<p>1. Croatia in not a part of the Schengen Area. Further to that, Croatia does not follow common rules in relation to VIS within the Schengen Acquis.</p> <p>2. N/A</p>
	Czech Republic	Yes	<p>1. a) N/A b) The following aspects should be clarified: • 5) the scope of data to be included in the VIS: the various stages of the decision making process, or final decision only (the latter implying that only issued visas would be included, but not visas who are refused, revoked, etc.); • 6) type D visa data with the Entry-Exit System (EES) calculator (since VIS will be interoperable with the EES); • 7) the possible linking with the Schengen visas and, related to that, the retrieval of the decision history (revocation / annulment included).</p>

			2. N/A
	Estonia	Yes	<p>1. (a) Estonia has not experienced cases when information related with permits for long-term stay of TCN in other MS would be crucial in identifying the TCN for return purposes. (b) Estonia considers sharing information related to long term visas and residence permits as an important element of the Schengen mechanism and fight against illegal migration. All the highlighted elements are related to one-another and should be dealt in a complex manner. Therefore it is not possible to highlight three elements among others.</p> <p>2. Statistical data not available.</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>
	Latvia	Yes	<p>1. a) Latvia has not experienced the cases when information related with long term stay of third country national in the other Member State could help Latvia in identification of this person and his/her return to the third country. b) Taking into account that each case requires individual approach, Latvia considers that the access for the Member States in VIS should be provided to the information on the foreigner that will allow to identify the person and to determine if he/she has a long term visa or residence permit in another Member State and to conclude if the arrangements need to be carried out for conducting consultations among the Member States on the possibility of termination (suspension) of legal status on the territory of the appropriate</p>

			<p>Member State and arranging of return procedure of the foreigner by the other Member State. So it is not possible to select only 3 aspects out of the 9 mentioned above.</p> <p>2. a), b), c) - Statistical data is not available as it is not collected. d) There were no cases when Latvia returned third country nationals with VIS hits.</p>
	Lithuania	Yes	<p>1. Lithuania had cases when persons from Pakistan applied for the residence permit on the ground of engaging in legal activities and submitted residence permits issued in Greece. During the examination process it was established that these document were forged. Lithuania would support the possibility of sharing information regarding residence permits and national visas issued in other Member States (for example, information on their validity). This would not only facilitate identification the legal status of a foreigner but also prevent secondary movements.</p> <p>2. Lithuania does not have such information.</p>
	Luxembourg	Yes	<p>1. 1. a) Yes we had several cases where they were in possession of a student visa or had a residence permit in other MS and they came to Luxembourg for introducing a demand for international protection. If we find it out then we proceed under the Dublin III regulation and request the issuing MS to take charge of the international protection application. b) 2) It is essential to include fingerprints because we consider that it helps to verify the identity and check other entries of a TCN in a short amount of time. It is a useful tool which allows increasing the effectiveness in processing a visa application. 7) We think it is important to strengthen and clarify the link with Schengen visas and consider the decision history. It could happen that a TCN has a valid D visa and a valid C visa in his passport, however currently only verifications about Schengen C - visas are possible in the VIS. 6) It needs to be clarified how D visa data can be calculated with the EES and receive clear information to deal with it. The question is even more rightful since both visas can be valid concurrently.</p> <p>2. 2. (a) How many VIS-hits did you receive in total (not only VIS-hits regarding return, but all)? 2016: 4028; 2017 (until April): 2108 (b) How many of these VIS-hits were usable in the framework of identification and return? 2016: 2108; 2017(until April): 1804 (c) Based on how</p>

			many of these VIS-hits did you get a laissez-passer or did the VIS-hit (as one of the supportive elements) help you to obtain a laissez-passer? n/a (d) How many persons have eventually been removed with a VIS-hit? n/a
	Netherlands	No	
	Slovak Republic	Yes	<p><b>1.</b> a) The Slovak Republic doesn't have a proven experience with misuse of visa type D by third-country national for stay in other member state. In practice, Dublin transfers from other member states to the Slovak Republic are made where nationals who have been granted a Slovak visa request asylum in another member state, respectively are detained for unauthorized stay. However, Slovakia does not keep records what kind of visa the person who has a Dublin transfer to the Slovak Republic is on, in practice, usually it is a type C visa with one-time or multiple entry. b) N/A</p> <p><b>2.</b> Bureau of Border and Alien Police of the Presidium of the Police Force states that since the data collection system is not put into practice in relation to the use of the VIS - hit for return purposes, it is not possible to provide the requested data. The executive departments of the border and alien police screen through the national screening system - the central screening console as well as information system VIS. Executive departments have also the possibility to screen by fingerprints in VIS, in cases where a third country national doesn't have a valid identity card. However, centrally, there is no indication of the use of individual or positive hits in the VIS, i.e. whether the person was returned to a third country and a temporary travel document was issued, respectively whether the person was returned by Dublin to another Member State.</p>
	Sweden	Yes	<p><b>1.</b> a. It is difficult to say whether similar cases have been seen in Sweden since category D visas are not recorded in any central database shared between Member States. b. The Swedish Migration Agency would like to see applications for category D visas included in the Visa Information System though at present it is difficult to highlight three aspects which are the most important. We do however have a few comments in relation to some of the aspects listed above:</p>

			<p>1) the validity of category D visas - it is important here to distinguish between category D visas and residence permits which category D visas can lead to. It is only the residence permit issued after arrival in the country that is valid for 5 years, not the category D visa. 2) The possible inclusion of fingerprints – Sweden does not currently require that biometrics are provided in connection with category D visas. The SMA would like to see fingerprints included in the Visa Information System but it is important to discuss an exemption from biometrics for situations that can sometimes arise where applicants are unable to provide biometrics before entering Member States. 3) the different purposes of issuance – in Sweden’s case, category D visas are issued when there are “special reasons”, in the following categories of cases: • Where the applicant is abroad, • When the applicant has submitted an application for extension of a residence and/or work permit but that application has not been determined by the Migration Agency and the person requires to return to Sweden • In quota cases The category D visa can be valid for up to one year. Sweden issues residence permit cards in cases concerning applications for a residence and/or work permit. These cards are sent to the relevant Swedish Embassy/consulate where the applicant can collect them. 4) The retention period – the Swedish Migration Agency’s view is that the same rules should apply here for category D visas as currently apply for category C visas. It would be very useful if the Commission could compile information about the category D visas which are issued by each member state in order to facilitate further discussions on this topic.</p> <p>2. a. 2016: 5383 2017 (until 28/02): 923 b. Statistical data is not available as it is not collected. c. Statistical data is not available as it is not collected. d. None – all returnees require a travel document to return, a VIS hit alone is not enough.</p>
	Switzerland	No	
	United Kingdom	Yes	<p>1. The UK does not participate in the Border and Immigration aspects of the Schengen Acquis. The UK has no access to the VIS system and therefore no decisions relating to visas or other immigration permissions are affected by the information held on those systems. All applications</p>



			<p>for entry to the UK (including visa and entry clearance applications) are checked against UK databases.</p> <p><b>2.</b> The UK does not participate in the Border and Immigration aspects of the Schengen Acquis. The UK has no access to the VIS system and therefore no decisions relating to visas or other immigration permissions are affected by the information held on those systems. All applications for entry to the UK (including visa and entry clearance applications) are checked against UK databases.</p>
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