VIS SCG

Visa Information System Supervision Coordination Group

Activity Report 2019-2020

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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 2004[1] as completed by Regulation 2008/767/EC of 9 July 2008[2] ('VIS Regulation').

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

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

In specific cases, the national authorities and Europol may request access to data entered in the VIS for the purpose of preventing, detecting and investigating terrorist and criminal offences. The procedures for such consultations are established in Council Decision 2008/663/JHA[3] ('VIS Decision'). These consultations are carried out via central access points in the participating countries and by Europol.

The VIS first became operational in October 2011. The system was gradually rolled out between October 2011 and February 2016 and is completely rolled out worldwide today[4].

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

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

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

[3] Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences

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

systems in the area of freedom, security and justice[5] ('eu-LISA') (Article 26) and connected to national units in the Member States using Testa.

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

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

The present document presents the Activity Report of the VIS SCG for the period 2019-2020. Ms Caroline Gloor Scheidegger and Ms Eleni Maragkou were respectively Chair and Vice-Chair of the VIS SCG. This has been once again confirmed, when Ms Gloor Scheidegger and Ms Eleni Maragkou were respectively elected as Chair and Vice Chair at the meeting of 17 June 2020.

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

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

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

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

2. Organisation and Coordinated Supervision

2.1 Main principles

The cooperation took the form of meetings held on a regular basis with all DPAs in charge of supervising the VIS at national level and the EDPS, acting together as the VIS SCG. The main purpose of these meetings was to discuss common problems related to supervision and find common solutions or approaches whenever possible. According to Article 43 para. 3 of the VIS Regulation, as well as Article 5 of the Group's Rules of Procedure, these meetings shall take place

[5] The Commission was responsible for the operational management of the VIS for a transitional period until the establishment of a new permanent IT Agency, eu-LISA, which became fully operational in December 2012.
[6] Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 767/2008.

at least twice a year. 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.

2.2 The Supervision Coordination meetings

In the period 2019-2020, four supervision coordination meetings took place on the following dates:

- 20 June 2019;
- 27 November 2019;
- 18 June 2020;
- 26 November 2020.

The first two meetings were held at the European Parliament in Brussels, while the latter took place remotely, due to the COVID-19 pandemic. As usual, they were organised back-to-back with the Eurodac SCG and the SIS II SCG meetings in order to reduce the financial, travel and administrative burdens and to ensure consistent, horizontal supervision policies of those large scale IT systems where possible.

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

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

Meeting of 20 June 2019

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

The Group exchanged views and discussed the results of a first draft report on training on data protection for staff of authorities accessing the VIS. Moreover, the Group adopted the VIS SCG Work Programme for 2019-2021.

Finally, the Group adopted the general part of the draft Activity Report for the period covering 2017-2018.

Meeting of 27 November 2019

The Group invited representatives of the Commission and the DPO of the eu-LISA. The data protection officer of eu-LISA updated the group on the overall performance of the VIS and the

latest developments related to the quality of data in the system. The Commission then gave a presentation of the Proposal to amend the VIS Regulation tabled by the Commission in May 2018 which includes important changes from a data protection prospective.

During this meeting, the Group adopted the final report on the training on data protection for staff of authorities accessing the VIS.

Additionally, the Group adopted a letter on the Proposal for a Regulation establishing conditions for accessing other EU information systems for ETIAS purpose.

Meeting of 18 June 2020

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

Additionally the Group began its discussions and work on a Common Inspection Plan. It also initiated discussions and work on the advance deletion of data within VIS.

Lastly, the Group elected Ms Caroline Gloor Scheidegger (Swiss DPA) and Ms Eleni Maragkou (Hellenic DPA) respectively as Chair and Vice Chair of the VIS SCG for a mandate of another two years.

Meeting of 26 November 2020

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

Lastly, the Group continued its discussions on the two work items, expressly on the Common Inspection Plan and on advance deletion of data.

3. 2019-2020: Main achievements

3.1 Review of the VIS proposal

On 15 May 2018, the Commission issued a proposal[7] to amend the VIS Regulation and the Visa Code among other legislative acts. This proposal notably proposes to include long stay visas and

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

residence permits in the VIS, to lower the fingerprinting age of child applicants for short stay visas from 12 to 6 years old, to introduce the possibility to check visa applications recorded in the VIS against other EU information systems and to require the storage of a copy of the bio-page of visa applicants' travel documents in the VIS.

The VIS SCG analysed the proposal and its data protection implications and adopted letters with comments on the proposed changes to the VIS Regulation and its recommendations. It addressed the letters to the European Commission, the European Parliament, the Council and eu-LISA. The VIS SCG focused on four main aspects of the Proposal: (1) the fingerprinting of children, (2) law enforcement access, (3) the extension of the scope of the system to also cover long-stay visas and residence permits, and (4) the supervision architecture.

3.2 Report on training on data protection and data security to staff with access to the VIS

The Group decided to work on the data protection and data security training to staff having access to the VIS.

Following its meeting of 13 June 2017, the Group had adopted a questionnaire on the training on data protection provided to staff of authorities having access to the VIS, which was subsequently sent to all Member States. This questionnaire was divided in two parts: the first one was addressed to national competent authorities, while the second aimed at understanding the national DPAs' involvement in the matter.

Following the replies by national authorities and national Supervisory Authorities, the VIS SCG issued some conclusions and recommendations in its final report.

Looking at the outcome of this questionnaire, the VIS SCG welcomed the overall satisfactory situation with regard to the training on data protection provided to staff having access to the VIS and encourages the Member States to further improve and regularly update their programs, both in terms of organisation and in terms of content. While the majority of respondents informed that there are procedures in place to ensure that staff members having access to the VIS receive appropriate training on data protection and security, some Member States reported not to have such trainings available. The VIS SCG encourages all Member States to ensure that such trainings are in place for all staff having direct or indirect access to the VIS.

As far as improvements are concerned, a greater cooperation among Member States should also be encouraged, in terms of exchanging good practices and experiences. In addition, the answers to the questionnaire revealed that the substance and regularity of trainings vary widely: improving the frequency of trainings and keeping the content up to date should be one of the priorities. Interestingly, some Member States called for greater unification of data protection training rules at EU level.

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, the Ministry of Foreign Affairs as processor, nor by any data subjects.

Inspections

The Austrian DPA initiated an inspection of the VIS in the second half of 2019. Due to COVID-pandemic the proceedings were halted, but were resumed in October 2020. The inspection was still ongoing in the reporting period.

Complaints

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

Remarks

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4.2. Belgium

Overview: state of play and developments

The Belgian Act of 3 December 2017 establishing the Data Protection Authority provides for the establishment of an inspection service, which is the investigative body of the DPA. On 24 April 2019, the new DPA was installed, with the new Inspector General being appointed and the inspection service becoming fully operational.

After the installation of the new members of the executive committee of the DPA, the inspection service started with the drawing of an audit plan regarding the MFA. This audit plan takes into scope the VIS processing at the MFA and its foreign embassies and consulates. An audit methodology was designed with standard questionnaires and standard reporting templates.

Inspections

As regards the supervision of VIS, the DPA completed the following audits at its own initiative:

Audit	Year	Status
Belgian Embassy in Dublin (IE)	2019	finalized
Belgian Embassy in Paris (FR)	2019	finalized
Belgian Embassy in The Hague (NL)	2019	finalized
Belgian Consulate General in Istanbul and the Belgian External Service Provider ESP in Istanbul(TR)	2020	Final audit report sent to MFA ; management letter sent to ESP

In 2019, the DPA also participated in Schengen Evaluations in the Czech Republic (24-29 March 2019) and Slovakia (12-22 November 2019).

At the end of 2020, the DPA was also subject of a remotely held Schengen Evaluation in Belgium.

Complaints

The Belgian DPA did not receive any formal complaints.

Remarks

It is important to note that the audit obligation has not been included in the official legal tasks of the Belgian DPA in the national DPA Act, but is carried out by the Belgian DPA solely on the basis of the European regulations. Considering the lacking legal framework, the DPA lacks the required time and resources for such audits, which require significant time and effort (cf the workload of the SchEval), hence resulting in no or limited visibility to such work.

4.3. Bulgaria

Overview: state of play and developments

In 2019 and 2020 continued the active participation of the CPDP in the SCG VIS and the discussions on the relevant topics, such as:

- carrying out checks on the interoperability with the other specific information systems (SIS II, Eurodac and Europol);

- application of the advanced deletion of data, set in Art. 25 of the VIS Regulation;

- difficulties by the individuals biometric identification, because of poor data quality;

- reduction of the children's age from 12 to 6 years old for fingerprints taking;

- the preparation of common model for carrying out VIS inspections with future possibilities to organize joint system evaluation.

In 2019, experts from the CPDP took part in the missions to evaluate the SIS II and VIS state in Hungary and Slovakia.

Inspections

In connection with the procedures on lifting the external borders checks with which Republic of Bulgaria will close the full process of accessing to VIS started a check of consulates to specific Bulgarian embassies. The preparation process consisted of sending information to the embassies, which issue the highest number of visas, and prepared questionnaires.

However, due to the Covid-19 pandemic crisis and the stringent measures undertaken to protect public health the inspections of the consulates were put on hold and were postponed to start in February 2021 and end in the first quarter of 2021. The prepared questionnaires were send within the reported period to some of the established data controllers. Inspection of the external service providers (ESPs) for issuing visa, with which Bulgaria has concluded contracts is also planned to be conducted.

Complaints

At this stage, no complaints about the personal data processing in the national VIS unit were received.

Remarks

The CPDP will continue to work with other DPAs on the data processing in VIS matters within the SCG VIS and be active part of the discussions on the relevant data protection issues. The Commission will also continue to provide the necessary information and undertake the relevant actions in order to achieve the full accession to the SIS II and VIS.

4.4. Croatia

Overview: state of play and developments

As the Republic of Croatia for now still use for its visa procedures a national information system (Croatian Visa Information System - "CVIS") which is not linked to the Visa Information System (VIS), it should be noted that the provisions of the Regulation on the Croatian Visa Information System (Official Gazette 36/13 and 105/17) concerning the authority and obligations of the Agency

for the Protection of Personal Data as a national supervisory authority (national DPA) are substantially in accordance with the provisions of the VIS Regulation.

In the period 2019-2020 related to "CVIS" there were no changes /developments brought to attention of Agency.

Inspections

Due to Covid-19 pandemic, as a main reason, conducting supervision plan regarding processing of personal data in the VIS ("CVIS" - Croatian Visa Information System) in operational units of the Ministry of the Interior ("MoI"), specifically border crossings (road, air and sea/maritime) and supervision of the processing and enforcement of personal data protection at the Ministry of Foreign and European Affairs as the data controller for personal data processed in "CVIS" (Croatian Visa Information System) was temporary stopped.

Consequently, regarding the obligations for conducting regular supervisory activities, Agency requested from Ministry of Foreign and European Affairs written reporting in form of "follow up" on what was done (on the actions taken) in relation to the comments and / or recommendations contained in the minutes/reports of inspections in diplomatic and consular missions of the Republic of Croatia carried out in previous period, in relation with supervision plan/inspection activities, relevant with issuing visa process, including aspects of implementation / improvement of technical and organizational protection measures related with personal data processing.

Complaints

In 2019 and 2020, the Ministry of Foreign and European Affairs ("MFEA") did not receive requests from the data subject regarding the processing of his/her personal data in the VIS ("CVIS"). Visa applicants submitted inquiries concerning only the visa application process and the lodging of an appeal in cases where a visa was refused.

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

Remarks
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4.5. Cyprus

Overview: state of play and developments

Pursuant to a public procurement, the Ministry of Foreign Affairs has assigned to a contractor the design and development of the new N.VIS, taking into account the functions foreseen in the new VIS Regulations.

Inspections

No inspection has been carried out.

Complaints

No complaints have been submitted to the DPA insofar.

Remarks

No remarks.

4.6. Czech Republic

Overview: state of play and developments

The Office for Personal Data Protection, as the Czech supervisory authority (SA), continued its activities connected to the Schengen cooperation. The main part of the SA's activity was the independent supervision of the lawfulness of personal data processing together with the monitoring of the proper compliance with the relevant legislation. The Schengen evaluation of the Czech Republic was carried out in 2019, its conclusions and recommendations were implemented during 2020, including an inspection at the Police of the Czech Republic as the data controller of the N.VIS, and publishing the template for lodging a complaint concerning personal data processing in the national visa system on the SA´s website. Expert of the Czech SA participated in the Schengen evaluation of Hungary in 2019.

Inspections

In 2020, an inspection at the Police of the Czech Republic, as the data controller of the N.VIS, was initiated by the SA. This inspection was not only based on the SA's Inspection plan but was also conducted to follow the 2019 Schengen evaluation recommendations. The inspection was completed in 2021, no violations were detected.

Complaints

During the period under review, the Czech SA received a total of 29 requests regarding visa policy of the Czech Republic. Since the SA is not competent for issuing any general statements concerning visa policy, nor it can provide any visa applications or appointments, it was necessary to inform the applicants about the division of its powers in the visa sector and inform the applicants about how to contact the Ministry of Foreign Affairs.

No complaints in relation to data processing within the VIS were received during the period of 2019-2020.

Remarks

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4.7. Denmark

Overview: state of play and developments

In general the Danish DPA has carried out its duties as supervisory authority during the reporting period, however, the Covid-19 pandemic has affected the work of the Danish DPA in 2020 and made it difficult to carry out especially on-site inspections.

Inspections

In December 2018, the Danish DPA carried out an extensive inspection on the processing of personal data related to the use of the VIS. The work continued into this reporting period, where the inspection was completed. Work was also done to follow up on the results of the inspection.

Complaints

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

Remarks

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4.8. EDPS

Overview: state of play and developments

As the supervisory authority for eu-LISA, the EDPS was in contact with eu-LISA both on working and management levels. Concerning policy developments linked to VIS, in 2019 the EDPS provided the European Commission with formal comments on two proposals to establish the conditions for access to other large scale IT systems for ETIAS purposes. The EDPS was also prior consulted by Europol in 2020 on Europol's access to VIS.

Inspections

During the reporting period the EDPS did not perform any audit under Article 42(2) of the VIS Regulation[8] at eu-LISA. As the previous audit took place in 2018, the EDPS plans the next audit for the year 2022 according to its legal obligation where an audit should take place at least every four years. Nevertheless, the EDPS followed closely and received regular feedback from eu-LISA on the implementation of the recommendations stemming from the previous audit. The EDPS, in November 2021, communicated to eu-LISA the fact that the process of the recommendations implementation has been significantly improved elevating the level of protection of personal data and confirmed the closure of 99% of them.

Complaints

Given the role of the central system, complaints against the processing of personal data in the VIS are usually directed against processing under the responsibility of the Member States (for instance, when an individual complains about a refused visa application or when they are not satisfied with an answer to an access request). Only complaints related to processing under the responsibility of the central unit would be relevant for the EDPS. The EDPS did not received any such complaint during the reporting period.

Remarks
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4.9. Estonia

Overview: state of play and developments

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

Inspections

The EE DPA did not make inspections during 2019 to 2020, although we have started new SIS-audit (VIS included), where we are planning to carry out on-site inspections.

Complaints and access requests

A data subject filed for an access request with the EE DPA to receive his personal data in the VIS. We forwarded his request to the Estonian authority that is responsible for the national part of VIS. The controller notified that no data was found related to the data subject. The data subject was informed accordingly and the proceedings did not go any further.

[8] Regulation (EC) No 767/2008 of the European Parliament and of the Council 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

Remarks

On the 6th of February 2020 the Ministry of Interior sent us a draft of the Statues of Aliens Database who are staying in Estonia without a valid legal basis. As that database is connected to SIS, VIS & EURODAC, then we made sure it is compliant with relevant legislation.

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 Finnish DPA began planning inspection pursuant to Article 41 (2) of the VIS Regulation.

Complaints

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

Remarks

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4.11. France

Overview: state of play and developments

The VIS is used for the examination of requests for short stay visas and decisions to refuse, extend, cancel or revoke a visa. It is also used to facilitate the verifications and identifications of visa applicants. In France, the Ministry of Interior and the Ministry for Europe and Foreign Affairs share competences with regards to the common visa policy. Today, the VIS data can be accessed from the RMV2 system, which is being replaced by the France Visas system. For the deployment of the latter system, which should theoretically last until mid-2023, pilots have been scheduled in 2021.

With regards to visa statistics, 4.3 million visa applications were received in France in 2019. 270,000 of these applications concerned long-stay visas. The figures for 2020 have not been provided since they would not be relevant regarding the global health situation.

The French DPA took part in all activities and meetings of the VIS SCG and fulfilled its supervisory and consultative role at the national level.

Inspections

In December 2020, the French DPA carried out two inspections in relation to data processing within the VIS. These inspections were conducted at the Ministry for Europe and Foreign Affairs and the Ministry of Interior to identify the actions taken in response to the observations resulting from the controls conducted within the framework of the 2016 Schengen evaluation

In March 2021, the French DPA conducted an onsite inspection at the Digital Directorate (DNUM) of the Ministry for Europe and Foreign Affairs and the Directorate for Foreigners in France (DGEF) of the Ministry of Interior. Investigations on the basis of the observations made in that context are ongoing and will enable the French DPA to determine the appropriate follow-up.

Complaints

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

Remarks

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4.12. Germany

Overview: state of play and developments

The Federal Commissioner for Data Protection and Freedom of Information (BfDI) recommends in his 2017/2018 Activity Report that police authorities should have access to meaningful documentation when accessing the Visa Information System (VIS). Since then measures to optimise documentation have been promised by the responsible bodies and these measures seem likely to result in improvements. However, follow-up checks have still revealed deficiencies in this area, which need to be improved by the responsible bodies. The BfDI will continue to critically monitor the implementation of the documentation improvement (BfDI, Activity Report 2020, 12).

Inspections

Inspections in 2019:

- Retrieval of data from the VIS database

Over the course of 2019, the BfDI carried out controls to determine whether the BKA's retrieval of data from the VIS database could be considered lawful. Searches of this kind can be carried out under certain conditions for the sole purpose of preventing, detecting or investigating terrorist or other serious crimes. The BfDI checked samples from the VIS sys-tem; the legitimacy of the data retrievals was readily apparent in all instances. The docu-mentation concerning data retrievals from the VIS database could be clearer, however, and the BfDI issued a recommendation in this respect (BfDI, Activity Report 2019, 53).

Inspections in 2020:

- Checks and complaints in the area of the Federal Office for the Protection of the Constitution

At the Federal Office for the Protection of the Constitution (Bundesamt für Verfassungss-chutz, BfV), the BfDI checked data processing in connection with alerts in the second-gen-eration Schengen Information System (SIS II), with searches in the Visa Information Sys-tem (VIS) and with data transmissions of the Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF) during the reporting period.

- VIS search checks

The BfDI also checked BfV searches in the VIS at the start of 2020. Such searches may be carried out by the BfV if they make a considerable contribution to the prevention or detec-tion of serious criminal offences and are necessary. During the inspection, it became ap-parent, among other things, that the documentation and verification of the existence of the search prerequisites did not comply with the legal requirements and that the storage period of the data searched for had to be structured in a more differentiated manner. The BfDI received the BfV and BMI statement shortly before the editorial deadline for his Activ-ity Report. The BfDI evaluates these and assume that this will also be followed by a further exchange on any adjustments to data processing that may still be necessary (BfDI, Activity Report 2020, 84-85).

- Inspection of the Financial Intelligence Unit (FIU)

2020 the BfDI checked a sample of 20 percent of all the requests the FIU conducted. All the requests result from investigation proceedings. Subject of the check was to find out if the requests were conducted in accordance with the formal requirements. The supervision authority of the FIU, the Federal Ministry of Finance, confirmed the future compliance with the statutory provisions and therefor the revision of the internal guidelines.

Complaints

Over the time period 2019/2020 the BfDI received no complaints.

Remarks

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4.13. Greece

Overview

The Hellenic DPA maintained a steadfast working relationship with the controller of N.VIS i.e., the Ministry of Foreign Affairs. This included the conclusion of the last comprehensive inspection that took place in 2016 with the issuance of a relevant Decision (in 2020) as well as the regular participation at training courses on data protections issues delivered at the Diplomatic Academy of the Ministry of Foreign Affairs.

Inspections

No comprehensive inspection was carried out during the specified time frame. However, the Hellenic DPA participated in a coordinated supervisory activity initiated by the VIS SCG in relation to the data protection training of the VIS competent authorities' staff. This supervisory activity was conducted by means of a questionnaire that was sent to the Ministry of Foreign Affairs so as to be filled and then assessed by the HDPA.

Complaints

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

Remarks

As Greece and in particular the Hellenic DPA was scheduled to be evaluated on the application of the Schengen *aquis* in the field of data protection in 2021, the Hellenic DPA in 2020 sent its replies on the Schengen Evaluation Questionnaire and was involved in the preparation for another inspection of the VIS (envisaged as a remote inspection due to the COVID-19 pandemic) and the upcoming Schengen evaluation.

4.14. Hungary

Overview

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Inspections

The Hungarian Embassy and Consulate in Brasil was inspected regarding VIS issues in June, 2020. The data protection inspection regarding VIS issues at the Consulate of Brasil was planned to be an

on-site visit but due to the pandemic the DPA had to revise its plan and launch its investigation remotely via questionnaire.

Complaints

The DPA received 11 complaints from data subjects. The DPA received data subjects' requests for information on data stored in VIS or request for general information on VISA application process mainly.

Remarks

The Hungarian National Authority for Data Protection and Freedom of Information decided to postpone its planned activities regarding VIS inspections at Consular Posts in 2020 due to the COVID pandemic.

4.15. Iceland

Overview: state of play and developments

The VIS system is accessible to Icelandic immigration authorities and the Police.

Inspections

The Icelandic DPA did carry out a full audit of the VIS in Iceland in 2019.

Complaints

The Icelandic DPA received no complaints during the period.

Remarks

The Icelandic DPA carried out a full audit of the VIS in Iceland in 2019. The main findings were that the Icelandic immigration authorities relied too heavily on documentation of security measures and procedures made by its main processor, The National Commissioner of the Icelandic Police. As a result, the Icelandic DPA made recommendations regarding more rigid documentation of security measures and procedures based on the Icelandic immigration authority's own security analysis.

4.16. Italy

Overview: state of play and developments

During 2019, the Italian DPA monitored, via request of documents and on-site inspection, the correct implementation of his own decision 18 July 2018, n. 425 (concerning measures imposed on the National VISA authority (MFAIC) in connection with the processing of personal data in visa issuing procedures), regarding the storage period for personal and biometric data in the visa records of the national VIS systems, some technical criticalities in connection with IT security, the management and analysis of log files for access to the national VIS systems, including the interface system with the ESPs.

A new complete set of supervision activities, under Article 41 of Regulation 767/2008, was envisaged in 2020, including on-site inspections at one or more consulates, ESPs, offices issuing border visas, as well as National VISA authority (MFAIC), especially with regard of ICT issues. Due to the COVID-19 pandemics and the prolongation of the state of emergency, all inspections of the DPA have been suspended.

Inspections

In March and October 2019, two specific on-site inspections were carried out at the at National VISA authority (MFAIC) to assess the the correct implementation of specific measure imposed by the decision 425/2018, including the functioning of a new specific application to perform the regular and systematic analysis of the log files.

Complaints

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

Remarks

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4.17. Latvia

Overview: state of play and developments

The Schengen Evaluation of Latvia on data protection, which also included VIS, was carried out in May 2018.

Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2018 evaluation of Latvia on the application of the Schengen acquis in the field of return was adopted on 20.09.2019.

During the period under review, the DPA focused on the implementation of the Council Recommendation.

The DPA expert participated in the Schengen evaluation mission in the Czech Republic in 2019.

In 2020, the DPA budget was significantly increased.

Inspections

The Data State Inspectorate of Latvia has not carried out any inspections during the reporting period related to VIS.

The DPA was unable to complete its audit activity to the VIS due to a significant lack of human resources during 2019, and due to COVID-19 spread in 2020.

Complaints

The Data State Inspectorate of Latvia did not receive any complaints in relation to data processing within the VIS during the reporting period.

Remarks

Although the DPA's budget was significantly increased in 2020, the DPA is still facing staff shortages.

4.18. Liechtenstein

Overview: state of play and developments

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Inspections

In 2020 the Data Protection Authority of Liechtenstein has initiated a full audit of the VIS, with the exception of the query client (access of law enforcement authorities) since this element has been subject to a previous audit.

The audit report was finalized in 2020 and seven findings identified. Since the formal process of the audit was not conclude yet by 2020 no subsequent measures were finalized in the reporting period.

In 2020 the planned Schengen Evaluation needed to be postponed to 2021 due to Covid-19 measures. In 2019 Liechtenstein answered the questionnaire in respect of the planned Schengen Evaluation.

Complaints

Liechtenstein did not receive any complaints from any data subject in respect of VIS.

Remarks

The Data Protection Authority of Liechtenstein maintains a good cooperation with the responsible personnel at the respective authorities.

4.19. Lithuania

Overview: state of play and developments

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Inspections

In 2019 the Lithuanian DPA carried out one on-site inspection regarding to the lawfulness of processing of personal data of persons applying for the issuance of visas at the Consulate General of the Republic of Lithuania in Almaty (Republic of Kazakhstan) (the Consulate) and VF Services (Kazakhstan) LLP (external service provider-ESP). During the inspection, it was established that:

1) The Ministry of Foreign Affairs of the Republic of Lithuania (the MFA) did not comply with the requirements of Paragraph 4 of Article 38 of the Visa Code by not monitoring the processing of applications at the Consulate, therefore Lithuanian DPA gave the indication to ensure continuous monitoring of the processing of applications at the consulate, as required by Article 38 (4) of the Visa Code.

2) The MFA violated Article 13 (1) and (2) of the BDAR by conducting video surveillance at the Consulate. Lithuanian DPA gave the indications: 1) to regulate by a contract the processing of video data by the controller, as required by Article 28 (1) and (3) of the BDAR; 2) to ensure that the information provided for in Article 13 (1) (c) of the BDAR (legal basis for data processing) is provided to data subjects in the context of video surveillance; 3) to clarify the Rules for the processing of personal data in the MFA, diplomatic missions, consular posts and special missions (the Rules), governing the processing of video data as required by Article 32 (1) of the BDAR.

3) The MFA did not take appropriate technical and organizational data security measures to prevent unauthorized reading, copying or alteration of the ESP during the transportation of Schengen visa applications and accompanying documents to and from the Consulate thereby infringed Article 43 (11) (b) and Annex X (A) (e) of the Visa Code. Lithuanian DPA gave the indication to take appropriate technical and organizational data security measures to prevent the unauthorized reading, copying or modification of data in the ESP during the transport of Schengen visa applications and accompanying documents to and from the Consulate, and to ensure that either the ESP visa application and the documents received or to revise the Agreement on the provision of visa center services (the Agreement) to include security measures actually used by the ESP, and to establish procedures for the periodic control of the use of these measures to ensure compliance with Article 43 (11) (b) and Annex X (A) (e) of the Visa Code.

4) Point 8 (i) of the Agreement allowed the ESP not to delete data immediately after their transmission, without ensuring compliance with Article 5 (1) (e) BDAR, Annex X (A) (d) of the Visa Code. The MFA did not implement the requirements of Article 44 (1) (A) (b) of Annex X to the Visa Code by not ensuring the encryption of personal data of visa applicants transmitted electronically to the ESP. During the inspection, neither the ESP, the Consulate nor the MFA provided the Lithuanian DPA with any documents according to which the ESP has been in operation since 2015 collected biometric data from visa applicants, including the agreement provided for in Part 2 of Annex 10 to the Agreement. Accordingly, in the absence of such a document, the MFA could not properly monitor the MFA's compliance with the MFA's obligations to collect and transmit biometric data, and the MFA did not comply with Articles 13 (6), 43 (11) (b) and (c). Lithuanian DPA gave the indications: 1) to ensure that the ESP deletes the data immediately after their transmission to the Consulate, as provided for in point A (d) of Annex X to the Visa Code, and adjust point 2 (d) of the Agreement accordingly; 2) to adjust point 8 (i) of the Agreement, taking into account the requirements of Article 5 (1) (e) and (f) of the BDAR, point A (d) of Annex X to the Visa Code; 3) to ensure that the personal data of visa applicants transmitted electronically to the ESP are encrypted as required by Article 44 (1) (A) (b) of Annex X to the Visa Code; 4) to regulate in writing the collection and provision of biometric data of visa applicants by the ESP and to ensure the control of the processing of these data, as required by Article 13 (6), Article 43 (11) (b) and (c) of the Visa Code.

All the indications has been fulfilled by August 31st 2020.

Complaints

The Lithuanian DPA has not received any complaints regarding data processing in the VIS in the period 2019-2020.

Remarks

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4.20. Luxembourg

Overview: State of play and developments

During the reporting period, the Luxembourgish DPA ensured a follow-up on the recommendations issued in 2018, which were based on the audit carried out in 2017.

The Luxembourgish DPA also ensured the implementation and the follow-up on the action plan to remedy the deficiencies identified during the evaluation of Luxembourg on the application of the Schengen acquis in the field of Data protection.

Inspections

No inspections relating to VIS have been carried out during the reporting period.

Complaints

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

Remarks (issues or problems)

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4.21. Malta

Overview: state of play and developments

During the period 2019-2020, 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. During 2020 the Maltese DPA has been notified that upgrades to the computer infrastructure is planned for the current year and 2021. Such Missions shall see the front-end computer hardware upgraded. The Maltese DPA was re-assured that the current infrastructure shall not be altered or changed and that fingerprint repositories shall remain segregated with added security as they currently are.

There were no specific legislative developments during the period 2019-2020.

Inspections

During 2020 the Maltese DPA carried out an inspection in relation to the SIS II and VIS. The inspection covered the retention and destruction of personal data concerning visas, especially manual application forms; the Controller / Processor agreement in place, the audit on user log activity conducted by the VIS DPO and a new format of the VISA Refusal letter.

Due to the COVID-19 pandemic no missions were visited during year 2020, however the Maltese DPA took note of VIS statistics. It was also agreed that if the restrictions on travel shall pursue even in 2021, the Maltese DPA shall compile a self-assessment questionnaire in relation to Missions.

The Maltese DPA intends to conduct further inspections on VIS during Year 2021, particularly on the user activity logs, issuing of Visas to third country nationals at the border.

Complaints
No complaints were received during the period 2015-2016.

Remarks

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4.22. Netherlands

Overview: state of play and developments

The second mandatory VIS audit took place in 2019-2020 and was executed by an external auditor. The objective of the audit was set out in the following investigation questions:

1. Does the processing of personal data, including biometric personal data, in the Visa Information System (VIS) by the chain partners who use the VIS comply with the requirements laid down in the General Data Protection Regulation, Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas and other laws and regulations applicable to the processing of personal data?

2. Have all the recommendations of the 2015 audit been implemented properly?

In December 2020 the audit report was concluded and delivered to the Dutch DPA.

After the audit, all users set up action plans in order to implement the recommendations (within one year after the start of the 'improvement phase'). Users report to the Dutch DPA on a regular basis as to the status of the implementation of these recommendations.

Inspections

During the reporting period 2019-2020 inspections of the consular posts of London and Dublin as well as the Dutch Consular Services Organisation and the External Service Provider's office were carried out. In 2021 the final inspection report was handed over to the DPA's enforcement department.

Complaints

In 2019-2020 the DPA received two requests for access or deletion of VIS data, which were forwarded to the Ministry of Foreign Affairs as the competent authority. No (other) complaints were received.

Remarks

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4.23. Norway

Overview: state of play and developments

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Inspections

In the reporting period 2019-2020, the Norwegian Data Protection Authority (NO DPA) carried out an inspection of the Norwegian Directorate of Immigration regarding their processing of personal data within the Visa Information System. The NO DPA looked into the following issues under the VIS regulation and the GDPR: access and access control, information security, the rights and freedoms of the data subject, training program, and logging.

Following its investigation, the NO DPA did not find any material findings on the above mentioned issues.

Complaints

The Norwegian DPA did not receive any complaints during the reporting period.

Remarks

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4.24. Poland

Overview: state of play and developments

In 2019 the Act of 14 December 2018 on the protection of personal data processed in connection with preventing and combating criminal activity which implements the Directive 2016/680, has entered into force. The new legal Act governs data protection of VIS data which falls within the scope of the Council Decision 2008/633/JHA. In march 2019 the Schengen evaluation in the field data protection was also carried out in Poland.

Inspections

During the reporting period, the Polish DPA carried out seven inspections of the VIS.

Three of them were conducted at the Border Guard. These inspections were focused mainly on technical and organizational measures that were adopted by controllers in order to ensure the lawfulness of the VIS data processing as well as data accuracy and actuality. The aim of these audits was also to verify if the data were removed within the retention period and how the data controllers manage user access control. Based on the inspection findings, no infringements were identified.

The Polish DPA conducted also inspections at the Ministry of Foreign Affairs and several consulates. The finding of the first audit was that the MFA did not undertake sufficient activities aiming at ensuring the compliance with applicable provisions of the data usage by the MFA's employees. On the basis of the inspection results, the Polish DPA ordered the controller to provide information and give explanation on this matter.

Complaints

No complaints on processing of the VIS data have been received. However, the Polish DPA has received inappropriately addressed data subjects rights requests which were forwarded to the data controller in accordance with provisions of the Code of Administrative Procedure.

Remarks

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4.25. Portugal

Overview: state of play and developments

No significant developments during this period.

Inspections:

No inspections were performed during this period.

Complaints:

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

Remarks:

No specific remarks.

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

During 2019-2020, the National Supervisory Authority for Personal Data Processing did not perform inspections with reference to the National Visa Information System.

Complaints

The National Supervisory Authority for Personal Data Processing received 1 complaint. However, the complaint was actually a request submitted by the petitioner to the Ministry of Foreign Affairs, without attaching the complaint itself. The request was related to the issuance of a long stay visa for studies and did not include all the necessary data. In this context, the complaint was not considered admissible.

Remarks

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4.27. Slovak Republic

Overview: state of play and developments

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Inspections

In 2019 and 2020, three inspections were conducted as far as the activity of SK DPA regarding VIS is concerned.

In 2019, there were two inspections. One was conducted at Embassy of the Slovak Republic in Cairo and one at Embassy of the Slovak Republic in Nicosia. Both inspections started in June 2019 and were finished in April 2020. They were focused mainly on processing operations within national part of the Visa Information System and compliance with data protection rules. SK DPA did not find any inconsistencies within personal data processing in Visa Information System.

In 2020, one inspection was conducted- namely the inspection of Central Visa Authority (under the Ministry of Interior of the Slovak Republic). This inspection started in June 2020 and was completed in November 2020. It was focused on processing operations of the Central Visa Authority within VIS, data subject´s rights and security of processing under data protection rules at stake. SK DPA did not find any inconsistencies within personal data processing within VIS.

There were supposed to be two more VIS inspections of other embassies in 2020, however, due to the pandemic situation, they were postponed.

Complaints

There were no complaints of data subjects regarding personal data processing in VIS in 2019-2020.

Remarks

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4.28. Slovenia

Overview: state of play and developments

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

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

Inspections

In 2018-2019 the Slovenian DPA carried out a general VIS inspection at the Ministry of Foreign Affairs. A final enforceable decision was issued on 3 July 2019 and the inspection was thereby completed.

Complaints

In the period 2019-2020 the Slovenian DPA did not receive any complaint regarding data processing in the VIS.

Remarks

In the period 2019-2020 the Slovenian DPA was not informed of any problems with the VIS database.

Schengen evaluation in the field of data protection was carried out in Slovenia in May 2019.

4.29. Spain

Overview: state of play and developments

Following the deployment of the VISA information system, initiated by the EU Commission in 2015, the action plan of the Agencia Española de Protección de Datos (Spanish DPA) consisted in the deployment of the VISA data protection audit system and the setting of a coordinated supervision model.

The activities of joint supervision 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 data-subjects rights.

In the same way, the activities of the companies in charge of the collection of the documentation of the applicants for a VISA, acting as outsourcing agents of the diplomatic representations of the Kingdom of Spain abroad, have been audited.

Inspections

The inspection of the VIS is to be broken down into different ex-works plans, the central VIS system and a specific one for each of the consulates inspected (Bucharest (Romania) and La Habana (Cuba) were audited.

Complaints

No complaints regarding data subject rights with the VIS IT System were lodged during the period 2019-2020.

Remarks

The deployment of the VIS, starting in 2015, 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 a new supervision model that includes a multiannual audit plan for the VIS system. The audits conducted during the period 2019-20 are a part current VIS 2016-21 Audit Plan.

The audit has been designed to meet the obligations established by the VISA legal framework according following scheme:

1. The AGENCIA ESPAÑOLA DE PROTECCIÓN DE DATOS (Spanish DPA) must independently monitor the legality of the processing of SIS II and VIS personal data within and from their territory.

2. The national supervisory authority shall ensure that, at least every four years, an audit of data processing operations is conducted in NSIS II and the NVIS in accordance with international auditing standards.

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

In 2017, Commission and Member State experts visited the Swedish DPA as part of the evaluation mechanism of the Schengen acquis including VIS. The DPA took part in this evaluation to explain how it carries out its task as the national supervisory authority according to Article 41 of the VIS regulation. The evaluation took place at both the DPA's and the Migration Authority's premises. The next evaluation will take place in May 2022.

Inspections

As part of its obligation to carry out an inspection of the national VIS at least every fourth year (Art. 41.2 in the VIS regulation), the Swedish DPA initiated a new inspection of the VIS in December 2019. After some delay due to the pandemic in 2020, the inspection was finalized in November 2021. The inspection included three visits on site at the Swedish Migration Agency and two letters with written questions to the Agency. The inspection had a wide scope and included questions on issues such as the use of processors, access to data by competent authorities, the exchange of information with other EU Member States, the time for storage of data, how data quality was ensured, transfers to third countries, data subjects' rights, training of staff and it-security. The inspection covered matters of compliance with both the VIS regulation and the GDPR.

The DPA issued warnings on two points where it was found that future processing was likely to infringe provisions of the GDPR. Firstly, the DPA found that the documents on the it-architecture for the national VIS did not seem to be formally approved, which could lead to insecurity as to their effect and in the end a possible lack of appropriate technical and organisational security measures. Secondly, the DPA found that there was no routine for deletion of user log data. Even though the time limit for deleting these logs (10 years) had not yet expired, the DPA found it likely that the lack of routine for deletion could lead to such data being stored for too long.

No other infringements were found.

Complaints

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

Remarks

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4.31. Switzerland

Overview: state of play and developments

At national level, the Swiss DPA continued being in contact with the data protection officer (DPO) of the Swiss State Secretariat for Migration (SEM) and, when necessary, with the DPOs of the Swiss federal Department of Foreign Affairs (FDFA) and the Federal Office of Police (fedpol). No specific technical or organisational issues were encountered. At European level, the Swiss DPA attended all coordinated supervision meetings and answered all questionnaires of the VIS SCG.

Inspections

No inspection was carried out in 2019 and 2020 on national level.

Complaints

The Swiss DPA received no complaints in 2019 and 2020.

Remarks

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5. What to expect next

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

- Monitoring the proposal to amend the VIS Regulation;
- Common Inspection Plan;

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.