

VIS SCG

Report on advance deletion of data in VIS



November 2023

1. Introduction & Background

The VIS system provides for strict time limits on the retention of data. The time limits are different for each category of data, but the principle is the same: the deletion is automatically carried out by the Central Unit upon expiry of the legal retention period.

Advance deletion also contributes to the sound management of large-scale databases. According to Article 25 of Regulation 2008/767:

“Where, before expiry of the period referred to in Article 23(1), an applicant has acquired the nationality of a Member State, the application files and the links referred to in Article 8(3) and (4) relating to him or her shall be deleted without delay from the VIS by the Member State which created the respective application file(s) and links.

2. Each Member State shall inform the Member State(s) responsible without delay if an applicant has acquired its nationality. Such message may be transmitted by the infrastructure of the VIS.

3. If the refusal of a visa has been annulled by a court or an appeal body, the Member State which refused the visa shall delete the data referred to in Article 12 without delay as soon as the decision to annul the refusal of the visa becomes final.”

However, advance deletion in VIS is not always ensured in an adequate and consistent manner at national level. This problem has been identified by DPAs in the context of their contributions to the first coordinated inspection.

Therefore, the VIS SCG decided to examine whether and how advance deletion is realised by the national VIS authorities, and whether there is a need for new solutions, e.g. modifying the technical features of the system to make it easier. This investigation should be seen more as an exploratory exercise, which could then lead to:

- the identification of good practices (whether they take the form of technical features, internal guidelines or administrative practices) and an encouragement to use them widely;

- any further recommendations if the exercise shows that there are deficiencies in the current system.

To this end, the VIS SCG adopted a questionnaire in June 2021. The questionnaire was divided in two parts: the first part was addressed to national competent authorities and the second to national DPAs. The objective was to examine whether and how advance deletion is carried out by the national VIS authorities and whether there was a need to seek for solutions to possible concerns.

The replies to the questionnaire were provided by 26 States between June 2021 and October 2022 and this report summarises the main findings.

2. First part of the questionnaire addressed to competent authorities

- The majority of States stated that the VIS authorities are aware of advance deletion of data, in line with Article 25 of VIS regulation. Three States, however, did not put into effect such provisions. Two States were working on the process for advance data deletion when replying to the questionnaire.
- From the 26 States that answered the questionnaire, nine stated that advance deletion of data could have been carried out either on request by the individual or following information communicated to the competent authorities. Four States carried out this procedure only on request by the individual, one only automatically and five others when travel documents/citizenship was issued to the individuals. One State carried out this procedure on request by the individual who acquired the nationality of the State in question, but in case of annulment of the refusal of a visa, the procedure would have been carried out automatically. One State reported that this had never happened.
- In terms of categories of data, the majority of States declared that all data provided would have been deleted or that data in accordance with the VIS Regulation would have been deleted. One State specified that information about names, date of birth and previous nationality would have been deleted. Another State specified that the data included links to records of the spouse or children or group of the data subject with which he/she had travelled.
- The majority of States could not provide statistics on advance deletion of data. Some of them underlined that no requests had been registered yet. Three States stated that there had been few cases, but the statistics were not kept or provided.
- The authorities that deal with applications for and granting of VISAs vary from country to country, but it is possible to identify a pattern. Representation authorities abroad, immigration services and the Ministry of Foreign Affairs were the authorities most mentioned by the States that replied to the questionnaire.

- Regarding an established mechanism whereby the authorities managing VIS are informed of the identity of the applicants for VISAs who have obtained the citizenship, the majority of the States stated that such a mechanism did not exist. Eight States stated that a procedure existed and six of them described their internal mechanism regarding this procedure. One State indicated that it was working on a concept of automated solution. Another State specified that such a mechanism existed, but only if the applicant initiated the advance data deletion process. Two States declared that they carried out regular checks every month and then proceeded with the necessary deletions in the event that the VIS system had data on a person who had obtained the nationality of the respective State.
- The majority of the States declared that data were not exchanged with the countries of origin or that this was not applicable to their specific situation. Six States stated that these data were exchanged with the relevant Member State. Two States indicated that the data were exchanged through the VIS infrastructure. A State replied that if another State had recorded the visa data, the competent authority would have informed immediately this Schengen State about the acquisition of citizenship.
- With respect to informing the new citizen about their right to ask for deletion of their data in the VIS, the majority of States affirmed that this information was either directly notified to applicants or available in their website. This information was not given to data subjects in ten States, and among them one specified that the deletion was carried out ex officio as part of the naturalisation procedure or on the basis of the notification from the civil registry service. One State declared this was non-applicable in their case. Two States indicated that they did not know whether the person who had acquired their nationality was informed about his/her right or not during or after the successful naturalisation. One State declared that the information was only given in the context of the application to the GDPR.
- Most of the States' VIS authorities felt that the legislation was correctly applied. The other States shared that some problems were encountered in this regard (as for example only applied on an ad hoc basis) or that this was not applicable to their specific situation. Two States did not have the relevant information.
- As regards the factors that contributed to the feeling that the legislation was incorrectly applied, the concerned States shared the following: lack of a technical application to be used by the VIS authority; inadequate legislation and a lack of standard procedure for the exchange information; information to case handlers in need for clarification. Other problems referred to the (technical) infrastructure, such as lack of the possibility to trace back the communication with other States in order to produce statistics (due to short period retention of the messages and log files that insufficiently specific to detect such messages). One State listed all of the above reasons.

- Almost all the States explained that no complaints based on the issues mentioned above were registered. One State stated that a technical problem was identified but was already being taken care of.
- As of a general assessment of the situation, the majority of the States considered that it was satisfactory or did not provide any specific comment. Seven States indicated some areas that could have been further developed in order to improve the service:
 - The creation of the technical functionality that could enable advance deletion;
 - The development of a mechanism to exchange information among Member States concerning the advance deletion of data;
 - The creation of an automated procedure to inform Member States when a new citizen is registered in order to request the advance deletion of data.
 - The need to establish in the national law clear specifications regarding the forwarding of the necessary information from the competent authorities to the national VIS unit.

One State assumed that cases of process for advance data deletion when obtaining citizenship might have been infrequent.

3. Second part of the questionnaire addressed to DPAs

- Almost all the DPAs stated that the competent authorities were aware of their obligations related to the advance deletion of data, although some of them were not applying it for various reasons. One DPA pointed out the number of competent authorities and considered difficult to assess whether they were all informing applicants sufficiently. Another DPA highlighted that it seemed that the data subjects were not necessarily informed specifically about the right to advance deletion pursuant to Article 25. Another DPA clarified that, due to the fact that the respective Member State had never applied the article, it had issued a recommendation on this matter, namely recommending the establishment of a national mechanism for transmitting the data (as it is the case for Eurodac) to cover any possible exceptional situation, notably when an individual acquires a citizenship before the period of 5 years expires.
- All DPAs stated that they did not receive requests by data subjects related to advance deletion of data or that this was not applicable to their specific situation. One DPA argued that the level of information provided to the applicants did not seem to be sufficient as it focused on the rights of access and to rectification as provided for under the GDPR.

- Among the DPAs which replied, several considered that the existing procedures were satisfactory or did not raise any specific issue. There was, however, space for improvement, and some DPAs expressed concerns regarding the answers given by the competent authorities. Some of the findings were:
 - Advanced deletion of data was not being carried out;
 - The information provided to the data subject in relation to the specific right to advance deletion could be improved;
 - The competent authorities did not communicate properly to inform one another when the applicant had become a citizen either because of the lack of IT infrastructure or because of the lack of an internal mechanism;
 - There was a lack of automated ways of informing other States about the acquisition of citizenship that would have lead to the advance deletion;
 - There was no monitoring of the statistics related to advance deletion of data;
 - There was a lack of awareness among the competent authorities and need to foster the transfer of information between them;
 - Put in place a mechanism and procedures in order to carry out advance deletion pursuant to Article 25 continuously and at the initiative of the authorities, rather than doing so on an ad hoc after a request from the individual.

4. Conclusions

The following conclusions are based on the answers to the questionnaire sent to Members of the VIS SCG.

Part of the questionnaire addressed to competent authorities:

- A majority of States have indicated that the VIS authorities are aware of advance deletion of data, in line with Article 25 of the VIS Regulation.
- The advance deletion of VIS data results from the application of different procedures: on request by the individual only, or following information communicated to the competent authorities, or both, or automatically.
- In terms of categories of data, the majority of States declared that all data provided would be deleted, or those in accordance with the VIS Regulation.
- Statistics cannot be provided at this stage, due to the absence of registration of requests, or due to the limited numbers of cases.

- National authorities dealing with applications for and granting of VISAs are in general either Representation authorities abroad, immigration services or Ministries of foreign affairs.
- A majority of States have declared that there was no established mechanism available, whereby the authorities managing VIS are informed of the identity of applicants for VISAs who have obtained the citizenship. In eight States, however, such a mechanism exists.
- A majority of States have declared that data are not exchanged with the country of origin or that this was not applicable to their specific situation, but seven States have stated that these data are exchanged with the relevant Member State.
- In general, new citizens are informed about their right to ask for deletion, either directly or through the website of the States. This information is not provided in nine States.
- Most of the national VIS authorities consider that the legislation is correctly applied.
- Almost all States have indicated that no complaints on the following issues had been registered: lack of a technical application to be used by the VIS authority, inadequate legislation, lack of standard procedure for the exchange information or lack of information to case-handlers.
- As of a general assessment of the situation, the majority of the States considered that it is satisfactory or did not provide any specific comment. Seven States indicated some areas that could be further developed in order to improve the service. These include: creation of a technical functionality that could enable advance deletion, development of a mechanism to exchange information among Member States concerning the advance deletion, creation of an automated procedure to inform States in case of registration of a new citizen, establishment in the national law of clear specifications regarding the forwarding of the necessary information from the competent authorities to the national VIS unit.

Part of the questionnaire addressed to DPAs:

- Almost all the DPAs have stated that the competent authorities are aware of their obligations related to the advance deletion of data, although some of them are not applying it for various reasons.
- All DPAs have indicated that they did not receive requests by data subjects related to advance deletion of data or that this was not applicable to their specific situation.

Several DPAs have considered that the existing procedures are satisfactory or do not raise any specific issue. There is, however, space for improvement, and some DPAs have expressed

concerns regarding the answers given by the competent authorities. Some of the findings are linked to the absence of advanced deletion of data being carried out, the insufficient information provided to data subjects, the lack of communication and awareness between competent authorities, the absence of monitoring of the statistics related to advance deletion of data, and the need to have a mechanism as well as procedures in place to carry out advance deletion of data continuously and at the initiative of authorities.

Annex

Questionnaire, part 1

- 1) Are the VIS authorities aware of advance deletion of data, in line with Article 25 of the VIS Regulation?
- 2) If so, is advance deletion carried out on request by the individual or following information otherwise communicated to the authorities?
- 3) Which category (ies) of data is (are) concerned?
- 4) Are there reliable figures? If so, please attach them.
- 5) Which authorities deal with applications for and granting of VISAs?
- 6) Is there an established mechanism available in your country whereby the authorities managing VIS are informed of the identity of those applicants for VISAs who have obtained the citizenship?
- 7) Do they exchange these data with the relevant Member State (the "country of origin")?
- 8) Is the new citizen informed about his/her right to ask for deletion of his/her data in the VIS?
- 9) Do the VIS authorities of your countries feel that the legislation is correctly applied?
- 10) If not, to which factors do they attribute that (inadequate legislation, lack of applicable mechanisms for data transfer, no need for it, etc.)?
- 11) Have there been any complaints based on this issue? If yes, how many and could you specify the content and how the complaints were resolved?
- 12) What is your general assessment of the situation? Please state any specific comments, remark or recommendation which you would find useful.

Questionnaire, part 2

- 1) Do you assess that competent authorities know about their obligation(s) related to the advance deletion of data? Do you think that the level of information provided to the applicants is sufficient? Please also provide relevant excerpts.
- 2) How many requests did you receive on the advance deletion of data by data subjects? Do you have specific procedures on this? How do you evaluate the level of cooperation with the other Member States authorities? If applicable, please provide the procedure followed and any available statistics.
- 3) What is your assessment of the general situation - are the procedures in force satisfactory? If not or only partially, how could they be improved?