

JUDr. Miloslav Smetana  
Police Academy of the Czech Republic  
Faculty of Security and Law  
Department of Police Activities  
smetana@polac.cz  
Orcid/Researched ID 0009-0009-7341-4582

## Visa Digitization as a Security Practice Tool

### Vízová digitalizace jako nástroj bezpečnostní praxe

#### Abstract

The presented article is a legal analysis of the European Union's partial results achieved in the upcoming visa digitalization project, and above all its impact on increasing security practice through the new way of granting short-term Schengen visas. It was developed as part of the research project of the program of the Faculty of Security and Law of the Police Academy of the Czech Republic in Prague for 2017-2023 „Current security threats of an anthropogenic nature and the possibilities of their elimination“ (research direction „Needs and forms of strengthening the competences and cooperation of security entities“). Specifically, it is scientific research task no.3.1 entitled „Analysis and expected development of the competences of the Police of the Czech Republic and police security entities in selected areas“. The newly prepared project for issuing digital visas should become a means to prevent fraudulent actions in the visa process and to eliminate unwanted (unregulated) migration of people to the European area. This is an ambitious goal, the result of which will be new procedures in the visa granting regime at consular sections of the embassies of member states in third countries, new procedures of police (border) authorities at the external Schengen borders, and police units in the interior of the Schengen area. The upcoming changes will also affect the tasks performed by the Police of the Czech Republic, especially the tasks of the foreign police service units.

**Keywords:** Visa digitization, short-term visa, external Schengen border, border control, Schengen area, consular offices, internal security, public order, ETIAS information system, visa information system, European Union visa platform.

#### Abstrakt

Předkládaný článek je právní analýzou dílčích výsledků Evropské unie dosažených v připravovaném projektu vízové digitalizace, a především jeho dopadů na zvýšení bezpečnostní praxe prostřednictvím nového způsobu udělování krátkodobých schengenských víz. Byl zpracován v rámci výzkumného projektu programu Fakulty bezpečnostně právní Policejní akademie České republiky v Praze pro rok 2017–2023 „Aktuální bezpečnostní hrozby antropogenního charakteru a možnosti jejich eliminace“ (výzkumný směr „Potřeby a formy posílení kompetencí a spolupráce bezpečnostních subjektů“). Konkrétně se jedná o vědeckovýzkumný úkol č. 3.1 s názvem „Analýza a očekávaný vývoj kompetencí Policie České republiky

*a policejně bezpečnostních subjektů ve vybraných oblastech*“. Nově připravovaný projekt pro udělování digitálních víz by se měl stát prostředkem k zamezení podvodných jednání ve vízovém procesu a k eliminaci nežádoucí (neregulované) migrace osob do Evropského prostoru. Jedná se o ambiciózní cíl, jehož výsledkem budou nové postupy v režimu udělování víz na konzulárních úsecích zastupitelských úřadů členských států ve třetích zemích, nové postupy policejních (pohraničních) orgánů na vnějších schengenských hranicích a útvarů policie ve vnitrozemí schengenského prostoru. Připravované změny ovlivní i úkoly plněné Policií České republiky, zejména úkoly útvarů služby cizinecké policie.

**Klíčová slova:** Vízová digitalizace, krátkodobé vízum, vnější schengenská hranice, hraniční kontrola, schengenský prostor, konzulární úřady, vnitřní bezpečnost, veřejný pořádek informační systém ETIAS, vízová platforma Evropské unie.

## Introduction

As part of the research project of the programme of the Faculty of Security and Law of the Police Academy of the Czech Republic in Prague for 2017-2023 *“Current security threats of an anthropogenic nature and the possibilities of their elimination”* (research direction *“Needs and forms of strengthening the competences and cooperation of security entities”*), specifically the scientific research task no. 3.1 entitled *“Analysis and expected development of the competences of the Police of the Czech Republic and police security entities in selected areas”*, a legal and security analysis of partial results of the European Union achieved in the upcoming project of visa digitization and its impact on increasing security practice through a new method of issuing short-term Schengen visas was carried out.

The aim of this paper is to present the results of the analysis focused on the consensus achieved so far by the Member States of the European Union and the conclusions of the legal and security analysis prepared by the author, with a focus on its positives and contribution to security practice in the field of regulation of migration movements. However, the paper also highlights some of the still unresolved security risks of the upcoming digitization of the visa process, which were identified as part of the research and which will be provided to the Police of the Czech Republic to be addressed in the discussion process.

Regulation of the entry of foreigners from third countries into the territory of the European area is one of the principles of the security policy of the Czech Republic and all Member States of the European Union. Already in 1985, the Agreement concluded between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at internal borders, in its prospective objectives, declared that the contracting parties would gradually unify their visa policy and conditions of entry into their territories in order to create an area of free movement, freedom, justice, and security. The principle of common visa practice was further developed by the Convention implementing the 1990 Agreement, which **assessed the common visa policy of the Member States as a way to ensure security in the common territory**. In the following periods, the visa practice developed in this spirit. The gradual accession of other European countries to the obligations under the Agreement and the Convention further unified their visa policies. With the adoption of the Treaty of Amsterdam of 1997,

which entered into force on 1 May 1999, the European Union undertook a significant shift in the legal framework in the areas of immigration, migration, visa, and asylum.

The newly set regulations became binding for all contracting states and consisted mainly of uniform procedures. Visa practice became one of the areas of the common EU policy, which developed under a regime of uniform treatment regulated by the issued regulations of the European Parliament and of the Council, with full binding force for all Schengen states.<sup>1</sup>

The common visa policy of the European Union is an essential element to ensure the security and proper functioning of the external borders. It facilitates legal residence in, or transit through, the Schengen countries and helps harmonize the Member States' procedures for issuing visas. It contributes to maintaining internal security, ensuring the free movement of persons within the Schengen area, facilitating the legal travel of third-country nationals to the European Union, eliminating illegal migration, as well as speeding up the implementation of border controls at the external borders.

However, the concept of visa policy cannot only be understood as the problem of issuing visas, but it is also necessary to include the conclusion of **visa waiver agreements** (so-called visa-free regime) in its framework, as the conclusion of each visa waiver agreement, regardless of the scope of travel documents covered by the visa waiver, is an integral part of the mutual travel regime. Also in this area, there is currently a uniform procedure within the European Union and only in a certain range of travel documents, or in exceptional cases specified by the EU law,<sup>2</sup> some possibility is left for individual Member States to regulate visa-free regimes according to their foreign political or economic activities. However, in the near future, third-country nationals who are exempt from the visa requirement will also have to have a so-called travel authorization to enter the Schengen area, which they will be able to obtain through an Internet application.<sup>3</sup> In the overall context of the EU visa policy, visa practice is also affected by the so-called **facilitation agreements** concluded between the European Union and certain third countries, aimed at special (more advantageous) regulation of procedures for issuing short-stay visas with the prospective intention of visa reciprocity or at least partial abolition of the mutual visa requirement for certain types of travel documents.

## Development of legal regulation of visa practice

From the point of view of the legal regulation of visa procedures, the first comprehensive adjustment in the regime of issuing short-stay visas for a maximum period of 90 days of stay in any 180-day period of a calendar year was made by the

---

<sup>1</sup> States that have applied to join the grouping of Schengen states and have fully complied with the Schengen acquis.

<sup>2</sup> Regulation (EU) 2018/1806 of the European Parliament and of the Council listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (codification).

<sup>3</sup> Regulation (EU) 2018/1240 of the European Parliament and of the Council establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No. 1077/2011, (EU) No. 515/2014, (EU) 2019/399, (EU) 2016/1624 and (EU) 2017/2226.

adoption of Regulation (EC) No. 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code). The aim of the adopted regulation was to ensure a uniform procedure for issuing short-stay visas and to create uniform conditions for obtaining a visa for all Member States, while ensuring the screening of each applicant. However, even before the entry into force of this regulation, a common information system had to be created, which would allow Member States to communicate with each other on visa issues. This information system was introduced by 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 (VIS Regulation).

Since the entry into force of the Visa Code in 2010 and the start of operations of the Visa Information System (VIS) in 2011, the environment in which the visa policy applies has changed considerably. On the one hand, the problems in the area of migration have deepened in recent years, on the other hand, it offers further significant technological developments and new opportunities to make the procedure for processing Schengen visa applications easier for both travellers and national authorities involved in issuing visas.

Until now, both regulations have been gradually amended several times, especially in the context of migration movements and in order to achieve a higher level of ensuring public order, security, justice, and free movement of authorized persons in the common Schengen area.<sup>4</sup>

The last amendment of 2021, which is a reform of the VIS to the extent of the information kept, can be considered a **substantial amendment to the VIS Regulation**. It also officially includes information on applicants for long-term visas and residence permits in the title of the regulation and its content. A significant progress made by the amended regulation is the direction towards interoperability between certain information systems of the European Union, which will allow complementarity (interconnection) between different systems in order to facilitate the correct identification of persons and thus contribute to the fight against identity fraud. The new regulation sets the age limit for obtaining biometric identifiers in the form of fingerprints of visa applicants from the previous 12 years to 6 years of age. Lowering the age limit is adopted for the protection of children, as they are a particularly vulnerable group. In illegal migration, they may become persons whose rights could be violated, for example, by being a child victim of human trafficking, a missing person, or an unaccompanied minor seeking asylum in a Member State.

**For the Visa Code, there was a significant partial amendment** in 2019,<sup>5</sup> clearly declaring the objectives of the visa regulation, focusing primarily on illegal migration, and setting out the possibilities of stricter conditions for obtaining a short-stay visa for third-country nationals whose state authorities do not cooperate in the return of their own citizens illegally staying in the Schengen area, and vice versa providing for the adoption of possible visa relief for third-country nationals whose state authorities actively cooperate in the return of their citizens. The adopted amendment

---

<sup>4</sup> Schengen area - the common territory of the Member States, in which persons can cross the borders of the contracting states at any point without having to pass border control.

<sup>5</sup> Regulation (EU) 2019/1155 of the European Parliament and of the Council amending Regulation (EC) No. 810/2009 establishing a Community Code on Visas (Visa Code).

also included the first steps **towards partial digitization** in the visa process. Efforts were made to make the procedures for visa applications as simple as possible and to minimize the burden on applicants.

By adopting the amendment, Member States have been authorized, according to their possibilities, to enable the electronic completion and submission of visa application forms and, in cases where the Member State concerned recognizes an electronic signature, also the acceptance of the electronic signature of the visa application form by the applicant. With the adoption of this regulation, an alternative option to apply for visas was introduced de jure, leaving the choice of such a procedure to individual Member States. In the framework of the current Visa Code, the modification has been implemented by the corresponding changes in Articles 10 and 11 of this Code.

When adopting the said legislation in the field of digitization, it was also stated that: *“Electronic application systems are an important tool to facilitate application procedures. A common solution aiming at digitisation should be developed in the future, thereby making full use of the recent legal and technological developments, to allow applications to be lodged online to accommodate applicants’ needs and to attract more visitors to the Schengen area.”*<sup>6</sup>

## Why digitization

In general, it can be stated that the global trend of digitization is advancing very quickly. Also, in the field of granting visas and residence permits, there are currently more countries that have embarked on digitization, or at least partial digitization of the visa process. We can mention, for example, Australia, India, New Zealand, the United Kingdom, the United States, and, to a limited extent, other countries such as Canada or Turkey. In addition, the travelling public expects faster, more modern, and simpler visa procedures.

The European Union’s lagging behind in this respect could also result in economic disadvantages, as the most unfavourable conditions for international travel also contribute to this area and the promotion of tourism is a desirable attribute. Without digitization, European countries would continue to face administrative burdens in managing visa procedures, visa applicants would continue to be subject to costly, time-consuming visa procedures, and there would still be risks associated with the security of the visa sticker. Digitization offers an opportunity to improve the visa application process, reduce costs and burdens for stakeholders, while increasing the security of the Schengen area. It is in line with other legislative developments in the European Union related to the IT environment for the management of the external Schengen borders and it contributes to the strengthening of security in the Schengen area.

Currently, only a few Member States of the European Union have created their own programme and used the possibility of online application for visas, thus taking the first step towards visa digitization. These Member States include, for example, France, Estonia, Denmark. No Member State has yet made use of the option to electronically

---

<sup>6</sup> Point 20 of the introductory text to Regulation (EU) 2019/1155 of the European Parliament and of the Council amending Regulation (EC) No. 810/2009 establishing a Community Code on Visas (Visa Code).

sign a visa application. In the conditions of the Czech Republic, the possibility of partial digitization in the visa area has not yet been used, but at selected consular offices it is possible to order online to apply for a visa or to be interviewed in the visa procedure.

The reasons for the need for visa digitization can be summarised as follows:

- elimination of risks related to counterfeiting and alteration of visa stickers currently used and the need to strengthen the security of the Schengen area;
- reducing the administrative burden of issuing visas at the consular representations of individual Member States and saving on the costs of the visa process;
- interest of the travelling public in a more modern, faster, and least burdensome administration, travel costs, and the highest possible time savings in obtaining a visa;
- response of the European Union to global developments, the non-acceptance of which could have repercussions on its economic interests;
- promotion of tourism.

The reasons were reinforced by the situation surrounding the COVID-19 pandemic, which led to a problematic and overall slowdown in the issuance of Schengen visas around the world due to the difficult personal reception of visa applicants at consulates and at visa application points.

## **ETIAS information system**

The first steps towards digitization within the European Union include, as already mentioned in the introduction, the adoption of a decision on the obligation of foreigners traveling under the visa-free regime to obtain a so-called **travel authorization** before entering the Schengen area. Although in this case it is not digitization to the extent envisaged by the introduction of visa digitization, the use of online Internet applications can be considered as one of the first steps towards more favourable conditions for the traveling public (applicants) as subjects of law and, on the other hand, as a progress towards ensuring the security of the common space. The reason for the introduction of the principle of travel authorizations was the European Union's effort to ensure more consistent border protection and security for the entire Schengen area. The police (border) authorities at the external borders do not have any information on passengers who are exempt from the obligation to hold a visa when crossing the external borders, and when carrying out border control, it is not possible to carry out a thorough security check to the extent that it is the case for foreigners with a visa obligation in the period of time before issuing a visa.

The European Travel Information and Authorisation System - ETIAS being introduced aims at a higher level of security, preventing illegal immigration and protecting the external borders, and contributing to the facilitation of border checks carried out by border authorities at border crossing points. ETIAS is similar to the ESTA or ETA systems currently used by the United States or Australia, respectively. The legislation is implemented by Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No. 1077/2011, (EU) No. 515/2014, (EU) 2019/399, (EU) 2016/1624 and (EU) 2017/2226.

The progress of the entire project is that ETIAS provides an online travel authorization application form for the applicant to provide basic information about their identity, travel document, place of first entry into the Schengen area, place of residence, contact details, information about education, employment, possibly about their family relationship to a European Union citizen; they pay a set fee through a bank or financial intermediary (assuming 7 EUR for an adult) and submit the visa application to the ETIAS central system (Central Unit) for processing through a web application. After completing the check, they will receive a travel authorization or a refusal to issue it by the same route. The foreigner will present their travel permit at the border control at the moment of entering the Schengen area. At the same time, however, border authorities will be able to refuse entry in justified cases. The travel authorization has a statutory validity, but it may also be revoked at any time during the period of its validity, if there are reasons for it. The foreigner will be informed of this fact via a web application or by other appropriate means.

Currently, ETIAS is still under construction. The original intention to implement it in 2022 was postponed to 2024. This is due to technical barriers consisting in the non-completion of other information systems, in particular the Entry/Exit system, required for the functionality of the ETIAS information system.

### **Digitization of the visa process – analysis of the reasons**

Visa policy is part of security practice and helps regulate migration movements. Both the Visa Code and the Visa Information System as means of implementing visa policy in the European Union guarantee that visa policy is a key tool for ensuring public order and security in the Schengen area and in individual Member States, helping face security risks, risk of irregular migration, at the same time serving as a tool for facilitating tourism and business. However, with the development of digitization in public administration, visa practice cannot avoid the new procedures that modern society and modern technology bring along. Therefore, substantial changes are being prepared in the process of issuing visas, which follow these developments. It is logical that changes related to digitization cannot be made in the short term. Taking into account that it will be necessary to make not only legislative changes and ensure adequate funding at the level of the European Union, but also changes of a technical nature that will also affect individual Member States, additional time will be needed for the digitization of issuing visas to be carried out.

Despite the fact that the current visa process has confirmed its legitimacy during its existence and continues to guarantee that visas will be issued to foreigners who do not pose a risk of illegal immigration and a risk of threat to public order or security of the Schengen area states, it is still possible to describe areas that can be further improved through the path of visa digitization. These areas include:

- Lengthy process and accumulation of costs of consulates for the management, processing, and archiving of documents in paper form. Dependence of Member States on external service providers to fulfil their obligations regarding the management of visas (on average 90 % of short-stay visa applications are submitted through external service providers, which entails high costs for contracts, necessary control activities, and other associated costs for visa applicants), the increase in the number of visa applications, and the obligation of third-country

nationals to visit a consulate or a visa application centre whenever they need to apply for a visa.

- The paper-based process is not resilient to threats or risks. For example, the COVID-19 pandemic had a significant impact on the visa procedure, as at key stages of the processing of Schengen visa applications, the current legislation systematically requires the physical presence of the applicant at the consulate or at an external service provider, which could not be fully ensured at the time of the pandemic.
- The physical visa sticker is not safe from forgery and fraud (e.g. falsification and alteration) and it is necessary to provide its secure transport and secure storage, which may be complicated in the conditions of consular workplaces abroad.
- There is an increased risk of speculative submission of visa applications by applicants who may be motivated to apply for a visa to a Member State that offers a fast-track procedure for processing a visa application (e.g. already enabled by the electronic submission of applications) and not to the Member State that they actually wish to visit.

The current procedure is also complex and burdensome for visa applicants, in particular because:

- each time a visa is applied for, visa applicants must travel to the nearest consulate or visa application centre and leave a travel document there, which makes it difficult for them to identify and travel abroad while the application is being processed;
- frequent travellers must repeat the same lengthy procedure for each application, which may, however, vary depending on the Member State of destination;
- where applicants apply for visas through an external service provider, they additionally pay application fees to that service provider.

The legal requirement for Member States to issue a visa sticker in paper form and the currently set regime whereby Member States use procedures that require personal attendance, the submission of paper documents, the varying level of digitization and the diversity of visa procedures across Member States are the main causes of the current problems.

Digitization of visa procedures thus offers an opportunity to improve the visa application process, reducing costs and the burden on everybody involved. At the same time, it guarantees an increase in the security of the Schengen area and is in line with recent legislative developments regarding the information technology environment for border management,<sup>7</sup> which contributes to strengthening the security of the Schengen area.

### **Analysis of the expected objectives and benefits of visa digitization**

All the reasons described led to the situation that in early 2021, the European Commission launched a discussion between Member States and the European Commission aimed at preparing a legislative proposal for digitization, while at the same

---

<sup>7</sup> Regulation (EU) 2019/817 of the European Parliament and of the Council establishing a framework for interoperability between EU information systems in the field of borders and visa.



time, a pilot project of an online platform for applying for visas was launched, confirming the feasibility of the concept of digitization. The online platform is a tool for the collection of applications that the national systems, which will be maintained, will be interconnected with. After a transitional five-year period, the online platform will be the only place to apply for a Schengen visa (with exceptions, e.g. family members of European Union citizens).

In April 2022, the **European Commission presented for discussion** the first concrete proposal for a Regulation of the European Parliament and of the Council amending Regulations (EC) No. 767/2008, (EC) No. 810/2009, and (EU) 2017/2226 of the European Parliament and of the Council, Council Regulations (EC) No. 1683/95, (EC) No. 333/2002, (EC) No. 693/2003, and (EC) No. 94/2003, and the Convention implementing the Schengen Agreement with the aim to digitize the visa process.<sup>8</sup> In essence, it is a regulatory and technical proposal that is in line with the European Commission's ambition to create legislation that corresponds to the current digital era, while meeting all the security criteria set in the field of visa policy and securing the external Schengen borders.

The submitted proposal assumes:

- comprehensive digitization of the visa process for short-stay visas, entitling the holder to enter and stay in the Schengen area for a maximum period of 90 days in any 180-day period;
- **creation of a single online platform of the European Union for the submission of visa applications** regardless of the Member State of destination and the replacement of the paper visa sticker by a digital visa;
- simplification and harmonization of the visa process, increasing the security of the Schengen area;
- eliminating the costs (financial and time) of the visa process and shortening its course, which will be beneficial for individual Member States as well as for visa applicants;
- exclusion of the possibility of falsification, alteration, and forgery of the visa sticker;
- preventing visa shopping (filing an application at the consulate, where there is the highest probability of receiving the visa regardless of the destination and purpose of the trip).

The establishment of the European online platform for visa applications and the introduction of the digital visa is based on ongoing proposals and needs aimed, on the one hand, at simplifying and harmonizing the procedures under the common visa policy and, on the other hand, at aligning travel, entry, and border control requirements

---

<sup>8</sup> Eur-lex. European Commission COM (2022) 658 final. Proposal for a Regulation (EU) of the European Parliament and of the Council amending Regulations (EC) No. 787/2008, (EC) No. 810/2009, and (EU) 2017/2226 of the European Parliament and of the Council, Council Regulations (EC) No. 1683/95, (EC) No. 333/2002, (EC) No. 693/2003, and (EC) No. 694/2003, and the Convention implementing the Schengen Agreement, as regards the digitalisation of the visa procedure [online]. [2023-03-15]. Available from: <https://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX%3A52022PC0658&qid=1679644130555>.

within the Schengen area with the new digital era, all while guaranteeing protection from security risks.

By conducting a legal analysis, it can be stated that, in addition to the aforementioned and partially commented VIS and the Visa Code regulations, the necessary changes will also apply to other European Union's regulations, which will have to be amended in the context of visa digitization to allow for issuing visas in digital form. The following can be cited as examples:

- Convention implementing the Schengen Agreement as regards the digitalisation of the visa procedure;
- Regulation (EU) 2017/2226 of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No. 767/2008 and (EU) No. 1077/2011.
- Council Regulation (EC) No. 1683/95 laying down a uniform format for visas;
- Council Regulation (EC) No. 333/2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form;
- Council Regulation (EC) No. 693/2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual;
- Council Regulation (EC) No. 694/2003 on uniform formats for Facilitated Transit Document (FTD) and Facilitated Rail Transit Document (FRTD) provided for in Regulation (EC) No. 693/2003;
- Decision of the EEA Joint Committee No. 94/2003 amending Annex XXI (Statistics) to the EEA Agreement.

## **Legal grounds**

The legal basis for submitting a proposal for the establishment of the visa digitization process is Article 77 of the Treaty on the Functioning of the European Union (TFEU). This article, in paragraph 2(a), empowers the Union to develop measures relating to "a common policy on visas and other short-stay residence permits". In paragraph 2(b), subsequently, it empowers the Union to develop measures relating to "the checks to which persons crossing external borders are subject". Article 79(2)(a) TFEU empowers the Union to develop a system of measures relating to "the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification". As the objective of the legal instrument is to digitize both short and long-stay visas, a common legal basis pursuant to TFEU Articles 77(2) and 79(2) is necessary.

The submitted proposal respects fundamental rights and observes the principles recognized in particular by the Charter of Fundamental Rights of the European Union. The introduction of the European Union's visa application and digital visa platform will take full account of the right to the protection of personal data, respect for private and family life, the rights of the child, and the protection of vulnerable persons. All the

safeguards of fundamental rights contained in the Visa Information System Regulation will remain fully applicable also in the context of the future European Union visa and digital visa application platform, prioritizing the rights of the child. The platform will have to take into account the requirements set out in the Accessibility Directive<sup>9</sup> in order to ensure easy access for people with disabilities.

After switching to the digital platform, visa stickers will no longer be printed. A record in the Visa Information System, which will be linked to the travel document of its holder and verifiable at any time by the competent authorities, will be considered a digital visa.

## **Options for variants of procedures**

As possible procedures for implementing the digitization of the visa process, the European Commission presented five possible options for discussion, with varying degrees of European Union's intervention in the current visa procedure.

### **Option I**

It is considered a baseline scenario. Under the baseline scenario, no legislative action would be taken at the European Union level. Member States would continue (or not) to develop their national digitization tools. The Commission would issue non-binding recommendations to Member States and support them with measures of a soft law nature.

### **Option II**

It includes some minimal legislative changes at the European level aimed at removing legal obstacles that limit the ability of Member States to further digitize the visa application process. A paper visa sticker would be replaced by the mandatory digital visa and an Internet service would be introduced to check its validity.

### **Option III**

It envisages the development and creation of a European Union visa application platform, albeit on a voluntary basis. Member States could decide to join the European Union visa application platform on a voluntary basis, or to develop or continue to use their own national platforms, or not to develop any solution for digital applications. Visa holders could verify the validity of their digital visa through the European Union visa application platform, depending on the Member State that issued the visa.

### **Option IV**

Similar to option III, it also includes the creation of a European Union visa application platform. While the participation of Member States in the European Union visa application platform would be optional under Option III, under Option IV the European Union's platform would be mandatory for all Member States after the end of the transitional period. Visa holders could verify the validity of their digital visa through the European Union visa application platform.

---

<sup>9</sup> Directive (EU) 2016/2102 of the European Parliament and of the Council on the accessibility of the websites and mobile applications of public sector bodies.

## Option V

It involves the full digitization of the procedure of applying for European Union's visa, compulsorily and without a transitional period. Unlike all other options, the applicant could enter their biometric data via a digital application, eliminating the need to personally visit a consulate or visa application centre, which would continue to exist under all other options.

## Performing review and analysis of individual options

After conducting my own analysis and analysis of individual variants, **option IV clearly appears to be the most advantageous from the safety and practicability points of view.** The reasons leading to this conclusion are, in particular, to ensure a uniform procedure in the field of visa issuance to the extent that it is currently applied. Option IV is the most optimal way to achieve the set goals. It would simplify and harmonize the visa application process across Member States, reduce the administrative burden for both Member States and visa applicants, and contribute to enhancing the security of the Schengen visa process. It would also be an appropriate option in relation to other criteria, such as data protection and fundamental rights. The content of Option IV can be summarized as follows:

- It envisages the establishment of a mandatory European Union digital visa application platform for short-stay visas and imposes the use of digital visas.
- It envisages a transitional period to allow those Member States that use or develop their own national visa platforms to phase out their national solutions and join the European Union visa application platform, thereby minimizing any non-refundable investment costs.
- Individual Member States would start using the European Union visa application platform gradually in the course of the transitional period.
- In addition, the visa application platform would be based on the decentralized storage of applications in the Member States' national systems.
- The Member States that have already partially digitized their application system (e.g. electronic form) should thus be able to use the interface for the transfer of data in electronic form to the national visa system used to process applications.
- The Member States that also have a solution in place to digitize the entire application may retain their existing digital storage solutions.
- Lower security or data protection risks and decentralized storage would make it possible to mitigate wasted costs for Member States that have already invested in digitization and set up appropriate storage capacities.

Under Option IV, third-country nationals can apply for a short-stay visa online through the application platform. **However, first-time applicants, applicants applying repeatedly after 5 years, applicants travelling with children (to protect the interests of the child), and applicants travelling with a travel document other than the one used for previous visa applications would still have to go to the consulate or visa application centre for identification in order to provide biometric data or other information.** According to the applicable rules of the Visa

Code, biometric data are in principle collected every 59 months starting from the date of the first collection, otherwise they are copied from the previous application.<sup>10</sup>

From the Schengen security perspective, a digital visa application process handled through the European Union visa application platform and based on a digital visa would enhance the security of the entire process, contribute to the security of the external borders of the Schengen area, and increase trust between Member States. It would also allow for partially automated identification of the Member State responsible for examining the visa application on the basis of the criteria of the Visa Code, thereby significantly reducing the risk of speculative visa applications.

A digital visa would significantly reduce security risks compared to a visa sticker. It would not be possible to steal empty visa stickers, as may be the case today at the consulates of the Member States. Option IV harmonizes the form and quality of the data of the supported documents uploaded to the European Union application platform, which will provide additional guarantees with regard to the detection of forged documents.

### **Approach of individual Member States**

The proposal to digitize the visa process was first discussed at the institutions of the European Union in the spring of 2022. All Member States support the introduction of digital visas, but do not yet fully agree on the voluntary nature or obligation to join the European Union's visa application platform. In particular, the fact that some countries have already partially digitized their national systems in accordance with the 2019 amendment of the Visa Code and have made appropriate investments in the operation of the system poses a certain problem in the opinions on the compulsory participation. It cannot be ruled out that these countries will be inclined to choose the option of voluntarily participating in the visa platform or some other compromise solution or they may possibly request financial compensation. Final opinions will only emerge from the ongoing discussions. However, the eventual financial costs of adapting national systems and the technical conditions for interconnection with the European Union's platform will also play an important role in this respect.

The European Commission also prefers the option of mandatory participation of Member States in the European Union's digital visa application platform and the mandatory replacement of a paper visa sticker with a digital visa. Option IV is also supported by the European Commission. According to its position, this solution offers the most harmonized level of digitization across the Member States and thus ensures better security of the Schengen area. In addition, national systems should be used to store data (providing decentralized access).

### **Visa digitization schedule**

Due to the technical complexity of the entire visa digitization project, high organizational requirements that will be faced by individual project entities, and financial demands, it is expected that the use of the European Union's digital platform should be launched on 1 January 2026. Subsequently, the gradual connection of

---

<sup>10</sup> Article 13(3) of Regulation (EC) No. 810/2009 of the European Parliament and of the Council establishing a Community Code on Visas (Visa Code).

individual Member States to the digital platform should take place in a transitional five-year period so that the full completion of the entire visa digitization project is achieved in 2031. A timetable has been set by the European Commission for the various stages of its implementation:

- The approval of proposals and the adoption of secondary legislation is expected by the end of 2023.
- In the period of 2024 and 2025, the development of the European Union's application platform is planned (the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice eu-LISA as the responsible entity).
- From the beginning of 2026, the European Union's platform should be launched and the issuance of digital visas should start.
- The proposal provides for a transitional period to allow Member States to gradually connect to the digital platform, which should be completed by the end of 2028. After the completion, all visa applications will be submitted online via the European Union's visa application platform (except for a few exceptional cases where a possible paper-based procedure would be maintained).<sup>11</sup>

However, the length of the transition period will still be discussed and will depend on the success of the workflow.

## **Risk analysis and outstanding issues - overall assessment**

The whole process of visa digitization is at the beginning of its development, discussions, compromising, and clarification of the definitive legislation. That is why there are so many unknown answers so far. Currently, the opinions of individual Member States are not final as to which of the five possible variants of the visa digitization process will be decided by individual states. From the security point of view, emphasis will have to be placed on the areas of exclusion of its circumvention and the setting of fixed rules for the evaluation of documents attached to applications for Schengen visas, especially travel documents. Therefore, it is essential to obtain relevant, clear, accurate, and reliable answers to certain areas of questions related to the exclusion of the possibility of misuse of the planned project, primarily in relation to security aspects and the smooth evaluation of the required documents, which are currently presented in the "in natura" form and assessed in this form by the consular sections of the Member States, the police authorities at the external Schengen borders involved in the decision on the issue of visas, and the police authorities when extending short-term visas in the Schengen area.

---

<sup>11</sup> Eur-lex. European Commission COM (2022) 658 final. Legislative financial statement, point 1.5 of the Proposal for a Regulation (EU) of the European Parliament and of the Council amending Regulations (EC) No. 787/2008, (EC) No. 810/2009, and (EU) 2017/2226 of the European Parliament and of the Council, Council Regulations (EC) No. 1683/95, (EC) No. 333/2002, (EC) No. 693/2003, and (EC) No. 694/2003, and the Convention implementing the Schengen Agreement, as regards the digitalisation of the visa procedure [online]. [2023-03-15]. Available from: <https://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX%3A52022PC0658&qid=1679644130555>

The evaluation of the genuine condition of the travel document, for instance, is particularly important. By scanning it, physical control, which is currently irreplaceable, will be excluded, forming an environment for abuse and forgery. From this point of view, it is offered to be considered as a possible solution for submitting a travel document in person when submitting the first visa application, having it checked within a specified period of time and subsequently after each issuance of a new travel document. However, the need to physically check the documents submitted to the visa application may not apply only to the travel document. There are also other important documents for the visa decision, when their authenticity and originality will be difficult to assess in the scanned form.

It also seems open and appropriate to discuss the possibility of leaving the possibility for visa applicants to submit their application in person, if they decide to do so for various reasons. It is necessary to take into account the option that not all visa applicants have the opportunity to work with the technical means required to create scans of documents, where a fixed establishment of the condition for using full digitization to submit visa applications would disadvantage these applicants.

Other examples in terms of security risks can also be included in the range of open questions:

- the method of ensuring the issuance of visas at the external borders, where it cannot be ruled out that an online connection may not always be possible, i.e. the establishment of an alternative method of control and issuance of visas;
- permanent ability to carry out checks on issued visas at the external borders, or technical security for carrying out border checks or for issuing decisions on refusal of entry;
- permanent ability to extend or cancel visas during the foreigner's stay in the Schengen area, including specifying how the visas will be extended within the territory;
- achieving the appropriate quality for the evaluation of digitally presented documents for the visa application, as the travel document now will not be sent to the consulate, which is a change from the current practice;
- the method of ensuring that the set technology will be able to evaluate electronically recorded documents in order to detect whether there is anything suspicious, especially in the case of a travel document in a situation where the travel document will not be submitted for the visa application (second and subsequent applications);
- determining the procedure if low-quality documents, e.g. a travel document, are submitted in electronic form;
- precisely defining the moment in the visa process that will be considered as the moment of delivery of the decision on granting / not granting the visa;
- resolving and clarifying how the appeal and judicial authorities will approach the evaluation of electronically presented documents when reviewing the decision not to grant a visa and whether electronic notification will be considered as evidence in appeal and court proceedings;
- determining the exact specification of the moment when the deadline for reviewing the decision not to grant a visa in the event of appeal begins - it will be the moment when the applicant logs into a secure account;

- the final decision on whether the scope of digitization will also be used for issuing long-term visas;
- determining the procedures specifying the method of extending the electronic visa in the territory of the Member States.

There are certainly more questions. At this point, I wanted to outline only those issues related to the security of the entire visa process when issuing digital visas and issues related to legal regulation. Due to the fact that the process of visa digitization is at the beginning of its development, there will be enough time to clarify and subsequently modify the still open and unresolved chapters. Overall, it can be stated that the positives that visa digitization should bring, according to the proposal of the European Commission, outweigh the unresolved risks.

## **Conclusion**

Although the process of visa digitization will be organizationally, technically, and financially very expensive for both the European Union's institutions and individual Member States, it can be viewed as an inevitable and appropriate step for the European Union in the field of cross-border movement of people. After resolving the still unclear issues and setting clear legislative, technical, and security rules, it will certainly become beneficial for tourism, business relations, family ties and will also benefit the economic activities of the European Union and individual Member States.

In addition to solving migration problems, the return policy of the European Union, ensuring the consistent implementation of border controls at the external borders, and the development of information systems, visa digitization is another step that will contribute to resolving these problems and to ensuring the free movement of authorized persons, public order, security, and justice in the Schengen area.

From the security point of view, the possibility of forgery and alteration of visas currently issued in the form of affixing a paper visa sticker to the travel document will be excluded. In the case of a sufficiently sophisticated system of checking the genuineness of documents, the new method of checking visa digitally will facilitate the work of border (police) authorities at the external borders as well as police authorities when carrying out residence checks on foreigners inland.

The introduction of the European Union's online visa application platform can be seen as a positive development that will facilitate the visa application process and the travel of visa holders to the European Union. However, the access of individual Member States to this platform, or the scope of its use, is still open at this time. In order to comply with the principle of uniform procedures applied so far, which are characteristic of issuing visas at this time, it can be objectively assumed that these principles will continue to apply in the future.

As yet unresolved and controversial issues, which are the outcome of the research carried out, will be forwarded to the Police of the Czech Republic, specifically the Foreign Police Service Directorate, for further evaluation and their subsequent possible application by the representatives of the Czech Republic in the working group of the EU Council on visa issues.



## Literature

### Monographs

KOUKAL, Michal. *Společná vízová politika EU: existuje právo na krátkodobé vízum?* Praha: Universita Karlova, Právnická fakulta 2017. Prameny a nové proudy právní vědy. 178 p. ISBN 978-80-87975-67-7.

SMETANA, Miloslav. *Cizinecká police a evropské právo. Přehled vybraných společných předpisů evropského práva upravujících cizineckou problematiku.* Praha: Policejní akademie České republiky v Praze, 2021. 88 p. ISBN 978-80-7251-509-7.

SMETANA, Miloslav et al. *Činnost cizinecké policie II.* Praha: Policejní akademie České republiky v Praze, 2023. 240 p. ISBN 978-80-7251-547-9.

### Conference papers:

JÍLEK, Dalibor and Pavel POŘÍZEK et al. *Vízová politika a praxe ČR v kontextu evropské unie. Quo vadis, vízum?* Proceedings of a scientific seminar. The Office of the Public Defender of Rights. Praha: Wolters Kluwer ČR, 2010. 280 p. ISBN 978-80-7357-605-9.

### Agreements and legislation:

Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders of 14 June 1985.

Convention implementing the Schengen Agreement of 14 June 1985, signed on 19 June 1990.

Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

Council Regulation (EC) No. 1683/95 of 29 May 1995 laying down a uniform format for visas.

Council Regulation (EC) No. 693/2003 of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual.

Council Regulation (EC) No. 694/2003 of 14 April 2003 on uniform formats for Facilitated Transit Document (FTD) and Facilitated Rail Transit Document (FRTD) provided for in Regulation (EC) No. 693/2003.

Council Regulation (EC) No. 333/2002 of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form.

Regulation (EC) No. 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code).

Regulation (EU) 2017/2226 of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No. 1077/2011, (EU) No. 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226.

Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (codification).

Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 establishing a framework for interoperability between EU information systems in the field of borders and visa.

- Regulation (EU) 2019/1155 of the European Parliament and of the Council of 20 June 2019 amending Regulation (EC) No. 810/2009 establishing a Community Code on Visas (Visa Code).
- Regulation (EU) 2021/1148 of the European Parliament and of the Council of 7 July 2021 establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy (see recital, in particular point 17).
- Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.
- Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies.
- Commission Staff Working Document. Summary of impact assessment reports - accompanying document of 27 April 2022 on the Proposal for a Regulation (EU) of the European Parliament and of the Council amending Regulations (EC) No. 787/2008, (EC) No. 810/2009, and (EU) 2017/2226 of the European Parliament and of the Council, Council Regulations (EC) No. 1683/95, (EC) No. 333/2002, (EC) No. 693/2003, and (EC) No. 694/2003, and the Convention implementing the Schengen Agreement, as regards the digitalisation of the visa procedure.

#### **Internet resources:**

- Eur-lex. European Commission COM (2022) 658 final, Proposal for a Regulation (EU) of the European Parliament and of the Council amending Regulations (EC) No. 787/2008, (EC) No. 810/2009, and (EU) 2017/2226 of the European Parliament and of the Council, Council Regulations (EC) No. 1683/95, (EC) No. 333/2002, (EC) No. 693/2003, and (EC) No. 694/2003, and the Convention implementing the Schengen Agreement, as regards the digitalisation of the visa procedure [online]. [2023-03-15]. Available from: <https://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX%3A52022PC0658&qid=1679644130555>
- Eu-lex. Regulation (EU) 2021/1148 of the European Parliament and of the Council of 7 July 2021 establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy. [online]. [23-03-16]. Available from: <https://eur-lex.europa.eu/search.html?scope=EURLEX&text=v%C3%ADzov%C3%A1+digitalizace&lang=cs&type=quick&qid=1679910280985&page=1>
- Eur-lex. Commission Staff Working Document. Summary of Impact Assessment Reports – Accompanying document to the Proposal for a Regulation of the European Parliament and of the Council COM(2022) 658 final. [online]. [2023-03-16]. Available from: <https://eur-lex.europa.eu/search.html?scope=EURLEX&text=v%C3%ADzov%C3%A1+digitalizace&lang=cs&type=quick&qid=1679910280985&page=3>

**JUDr. Miloslav SMETANA (\*1955)**, holds a university degree in law. From 1993 to 2019, he was in service as a member of the Police of the Czech Republic with a position at the Directorate of the Foreign Police Service in various managerial positions. From 2001 to 2008, he was a member of the Committee on the Rights of Foreigners of the Government Council for Human Rights. Since 2015, he is an external collaborator of the Police Academy of the Czech Republic in Prague, where he currently works as an academic worker. In his teaching and publishing activities, he focuses mainly on alien issues, migration, and alien law.