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From: Visa Working Party/Mixed Committee
EU-Iceland/Liechtenstein/Norway/Switzerland)

On: 15 June 2015

Subject: Draft Regulation of the European Parliament and of the Council on the
Union Code on Visas (Visa Code) (recast)

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1. At its meeting on 15 June 2015, the Working Party examined the drafting suggestions made by the Presidency in 9450/15.
 2. The outcome of the discussions during that meeting is to be found in the Annex attached. Comments in relation to the text are set out in the footnotes to the Annex. The text of the draft Regulation as amended by the Working Party appears in **bold** (new text or (...)) when text has been deleted). The changes suggested by the Presidency, which have not yet been agreed, are underlined.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the Union Code on Visas (Visa Code)¹

(recast)

Definitions and facilitations

TITLE I

GENERAL PROVISIONS

Article 2

Definitions

For the purpose of this Regulation the following definitions shall apply:

8. "VIS registered applicant" means a **visa** applicant whose data are registered in the Visa Information System;

9. "VIS registered regular traveller" means a visa applicant **whose data are** registered in the Visa Information System and who has obtained **at least three uniform visas or visas with limited territorial validity issued in accordance with Article 22(3) within the 24 months prior to the application or one multiple-entry uniform visa or visa with limited territorial validity issued in accordance with Article 22(3) valid for at least one year** within the 36 months prior to the application;²

¹ **PL** and **HU** entered a reservation on the whole text of the document.

CHAPTER II

APPLICATION

Article 9

General rules for lodging an application

2. **Except in the case of an applicant for whom the fingerprinting was temporarily impossible at a previous application as referred to in Article 12(7)(b)¹**, VIS registered applicants shall not be required to appear in person when lodging an application, where their fingerprints have been entered into the VIS less than 59 months before.

Article 13

Supporting documents

1. When applying for a uniform visa, the applicant shall present:

- (a) documents indicating the purpose of the journey;
- (b) documents in relation to accommodation, or proof of sufficient means to cover his accommodation;

¹ Article 12(7)(b) reads as follows:

"The following applicants shall be exempt from the requirement to give fingerprints:

(b) persons for whom fingerprinting is physically impossible. If the fingerprinting of fewer than 10 fingers is possible, the maximum number of fingerprints shall be taken. However, should the impossibility be temporary, the applicant shall be required to give the fingerprints at the following application. The authorities competent in accordance with Article 4(1), (2) and (3) shall be entitled to ask for further clarification of the grounds for the temporary impossibility.

Member States shall ensure that appropriate procedures guaranteeing the dignity of the applicant are in place in the event of there being difficulties in enrolling."

(c) documents indicating that the applicant possesses sufficient means of subsistence both for the duration of the intended stay and for the return to his country of origin or residence, or for the transit to a third country into which he is certain to be admitted, or that he is in a position to acquire such means lawfully, in accordance with Article 5(1)(c) and (3) of Regulation (EC) No 562/2006 of the European Parliament and of the Council¹;

(d) information enabling an assessment of the applicant's intention to leave the territory of the Member States before the expiry of the visa applied for.

2. Points (b), (c) and (d) of paragraph 1 **shall** not apply to applicants who are VIS registered regular travellers and who have lawfully used the visas obtained within the respective time-limits referred to in Article 2(9)².

6. The consulate shall start processing the visa application on the basis of (...) copies of the supporting documents. Applicants **whose data** are not yet registered in the VIS **or VIS registered applicants whose data are registered in the VIS only in relation to a refused visa³** shall provide the original. The consulate may ask for original documents from applicants who are VIS registered applicants (...), (...) where there is doubt about the authenticity of a specific document **or where the requirement to submit original documents stems from the harmonised list of supporting documents referred to in Article 46(1)(a).**

¹ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).

² The **Chair** reported that the identical cross-references were included in Article 18(2) and Article 21(3). **PT** favoured the wording as in 7437/15. **FR**, supported by **CH** and **FI**, found the cross-references difficult to read, which the **representative of the Commission** (COM) could agree with. The **Chair** said the text still needed more fine-tuning.

³ **DE** agreed with the wording as suggested. **FR**, backed by **AT**, **BE**, **PT** and **NO**, was supportive of the idea but warned that the trend towards applying for a visa online could be hampered by the obligation to submit original documents. It should therefore be up to consulates to ask for the original if need be. **COM** supported this idea and recalled its reservation on paragraph 6, since it believed this was not the right place to regulate such details. Moreover, COM stated that since 70 % of visa applications nowadays were made via external service providers, who do not see the originals, the obligation to submit them would constitute a brake to a smooth visa application procedure.

CHAPTER III

EXAMINATION OF AND DECISION ON AN APPLICATION

Article 18

Verification of entry conditions and risk assessment

2. In the examination of an application for a uniform visa lodged by a VIS registered regular traveller who has lawfully used the visas obtained within the respective time-limits referred to in Article 2(9), it shall be presumed that the applicant fulfils the entry conditions regarding the risk of irregular immigration, (...) and the possession of sufficient means of subsistence.

3. The presumption referred to in paragraph 2 shall not apply where the consulate has reasonable doubts about the fulfilment of these entry conditions based on information stored in the VIS, such as decisions annulling a previous visa, or in the passport, such as entry and exit stamps or **any other relevant** information. In such cases, the consulates may carry out an interview and request additional documents **as referred to in paragraph 10**.

10. During the examination of an application, consulates may in justified cases carry out an interview and request additional documents **and information specified in Article 13(1)**.

CHAPTER IV

ISSUING OF THE VISA

Article 21¹

Issuing of a uniform visa

-1. A visa applicant for whom the competent authorities have ascertained, following the examination procedure set out in Chapter III, that there are no grounds for refusal in accordance with Article 29, shall be issued a visa as requested pursuant to the conditions specified in the following paragraphs.²

3. VIS registered regular travellers who have lawfully used the visas obtained within the respective time-limits referred to in Article 2(9) shall be issued a multiple-entry visa valid for at least three years.³

¹ **PT** entered a scrutiny reservation because it believed it to be contradictory.

² **FR**, supported by **BE, CH, DE** and **AT**, was of the opinion that this new paragraph served no purpose. **COM** agreed with **FR**. The **Council Legal Service (CLS)** stated that this paragraph constituted an overarching explanation of how the article had to be read. Moreover, CLS added that the paragraphs of the article should all be read together, i.e. paragraphs 3 and 4 meant that consulates were bound to issue a visa only if all the conditions of paragraph 1 were met.

³ **LU** suggested adding a phrase at the end of paragraphs 3 and 4, to the effect that the visa referred to could only be issued if the applicant had applied for it.

4. Applicants referred to in paragraph 3 who have lawfully used the multiple entry visa valid for **at least** three years shall be issued a multiple-entry visa valid for five years provided that the application is lodged no later than one year from the expiry date of the multiple entry visa valid for **at least** three years.

4a. However, in the cases referred to in Article 18(3), paragraphs 3 and 4 shall not apply.¹

¹ **SE** and **NL** agreed. **FR** said that this paragraph created confusion and was not a solution to the main objection against Article 21, which was the automatic issuing of visas. **BE** maintained its reservation since it considered that it still entailed some kind of automatic issuing of visas. **DE**, supported by **CZ** and **AT**, while welcoming the idea, said the wording had to be improved. **COM** stressed that the consulates, in case of doubt, could investigate further, for example by requesting documents or calling for an interview. However, if there were no doubts, **COM** said that the visa had to be issued for the period referred to. **CLS** suggested adding a sentence in paragraph -1 in order to avoid automaticity. Moreover, it should be made clear that, in case of doubt, only the general rules would apply, not paragraphs 3 and 4.

Deadlines

CHAPTER II

APPLICATION

Article 8

Practical modalities for lodging an application

1. Applications **shall** be lodged **no more than** six months before and, **as a rule**, no later than 15 calendar days before the start of the intended visit.

CHAPTER III

EXAMINATION OF AND DECISION ON AN APPLICATION

Article 19

Prior consultation of central authorities of other Member States

2. The central authorities consulted shall reply definitively as soon as possible but not later than within seven calendar days after being consulted¹. The absence of a reply within this deadline shall mean that they have objections to the issuing of the visa.²
3. Member States shall notify the Commission of the introduction or withdrawal of the requirement of prior consultation, **as a rule**, at the latest 15 calendar days before it becomes applicable. This information shall also be given within local Schengen cooperation in the jurisdiction concerned.

¹ **BE, PT, CH** agreed. **COM** disagreed with seven calendar days since it was willing to stick to its initial proposal (five calendar days).

² **DE** agreed with the two suggestions made in this paragraph. **BE**, supported by **PT, FR, CH, RO, FI, IT, DK, NO, EL, AT** and **COM**, disagreed since it felt this was unrealistic and could also lead to more visas being refused. **PT** and **ES** entered a scrutiny reservation.

CHAPTER III

EXAMINATION OF AND DECISION ON AN APPLICATION

Article 20

Decision on the application

1. Applications shall be decided on within **15** calendar days of the date of the lodging of an application which is admissible in accordance with Article 17.
2. That period may be extended up to a maximum of **45** calendar days in individual cases, notably when further scrutiny of the application is needed.

Visa fee

Article 14

Visa fee

1. Applicants shall pay a visa fee (...).
2. Within 6 months after the date set out in Article 55(2) and not less than every 3 years thereafter, the Commission shall by means of implementing acts revise the amount of the visa fee in order to reflect the administrative costs. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 51(2).¹
3. The following categories shall pay no visa fee:
 - (a) minors under the age of **twelve** years ;
 - (b) school pupils, students, postgraduate students and accompanying teachers who undertake stays for the purpose of study or educational training;
 - (c) researchers from third countries, as defined in Council Directive 2005/71/EC², travelling for the purpose of carrying out scientific research or participating in a scientific seminar or conference;
 - (d) (...);

¹ **FR, NL, FI, DE** and **SK** agreed. **AT, BE, SE, CH** disagreed and favoured a reference to the amount of the visa fee in an annex. **SE** said that not only administrative costs but also overall costs, such as the need to cover the exemptions from the visa fee, should be taken into account. **PT** and **EL** entered a scrutiny reservation. **PL** disagreed since it was of the opinion that it should not be left to the Commission to decide on the matter. **ES**, while supporting **PL**, stated that with a view to attracting more tourists, administrative costs should not be the only basis for fixing the visa fees. **EL** raised concerns and said that further consideration should be given to the issue. **COM** stressed that this part was not concerned by the recast exercise since it had not been indicated as such in its proposal (not highlighted in grey). **COM** therefore said that, in accordance with the interinstitutional agreement on better law-making (OJ C 321, 31.12.2003, p. 1), the text could not be touched. However, **CLS** stated that, even though this part had not been highlighted, the text could still be amended if the Commission agreed to do so or if there was unanimity among the Member States on amending it.

² Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purpose of scientific research (OJ L 289, 3.11.2005, p. 15).

(e) participants aged 25 years or less in seminars, conferences, sports, cultural or educational events organised by non-profit organisations;

[(f) close relatives of the Union citizens referred to in Article 8(3).

(g) family members of Union citizens as referred to in Article 3 of Directive 2004/38/EC in accordance with Article 5(2) of that Directive.]¹

3a. The visa fee may be waived for holders of diplomatic and service passports.

4. Member States may in individual cases, waive or reduce the amount of the visa fee to be charged when this serves to promote cultural or sporting interests as well as interests in the field of foreign policy, development policy and other areas of vital public interest or for humanitarian reasons.

5. The visa fee shall be charged in euro, in the national currency of the third country or in the currency usually used in the third country where the application is lodged, and shall not be refundable except in the cases referred to in Articles 16(2) and 17(3).

When charged in a currency other than euro, the amount of the visa fee charged in that currency shall be determined and regularly reviewed in application of the euro foreign exchange reference rate set by the European Central Bank. The amount charged may be rounded up and consulates shall ensure under local Schengen cooperation that they charge equivalent fees.

6. The applicant shall be given a receipt for the visa fee paid.

¹ The facilitations included in (f) and (g) should be discussed together with the definition of close relatives, as well as the facilitations granted to close relatives and family members of EU citizens.

Article 53

Repeal

2. A visa fee of EUR 60 as referred to in Article 16 of Regulation (EC) 810/2009 shall continue to apply until the Commission has adopted an implementing act as referred to in Article 14(2) of this Regulation.¹

¹ PT entered a scrutiny reservation.

Travel Medical Insurance

Article 14a

Travel medical insurance¹

1. Applicants for a uniform visa for one entry shall prove that they are in possession of adequate and valid travel medical insurance to cover any expenses which might arise in connection with repatriation for medical reasons, urgent medical attention and/or emergency hospital treatment or death, during their stay on the territory of the Member States.

2. Without prejudice to paragraph 3, applicants for a uniform visa for more than one entry (multiple entries) shall prove that they are in possession of adequate and valid travel medical insurance covering the period of their first intended visit.

In addition, such applicants shall sign the statement, set out in the application form, declaring that they are aware of the need to be in possession of travel medical insurance for subsequent stays.

3. The applicants for a uniform visa who are holders of diplomatic passports and VIS registered regular travellers shall not prove that they are in possession of adequate and valid travel medical insurance.²

VIS registered regular travellers shall sign the statement, set out in the application form, declaring that they are aware of the need to be in possession of travel medical insurance.

¹ **BE, CH, NO, FR, SE, ES, DE, FI, PT, NL, DK** agreed with the reintroduction of the article relating to Travel Medical Insurance (TMI). **COM** said it wanted to stick to its proposal since no information in favour of maintaining TMI had been put forward by delegations. **COM** felt it was unacceptable that the period of validity of the visas issued by Member States would be based on the length of the TMI, moreover without a period of grace. Furthermore, **COM** noticed that the TMI did not cover all medical situations and was therefore not as useful as Member States believed.

² **BE**, supported by **CH, NO, FR, SE, DE, FI, PT, NL, DK**, disagreed with the idea of exempting the travellers referred to in this paragraph. Moreover, **SE** emphasised that possession of travel medical insurance would not be difficult to prove for the travellers concerned.

4. The insurance requirement may be considered to have been met where it is established that an adequate level of insurance may be presumed in the light of the applicant's professional situation. The exemption from presenting proof of travel medical insurance may concern particular professional groups¹, such as seafarers, who are already covered by travel medical insurance as a result of their professional activities.

5. The insurance shall be valid throughout the territory of the Member States and cover the entire period of the person's intended stay or transit. The minimum coverage shall be EUR 30000.

When a visa with limited territorial validity covering the territory of more than one Member State is issued, the insurance cover shall be valid at least in the Member States concerned.

6. Applicants shall, in principle, take out insurance in their country of residence. Where this is not possible, they shall seek to obtain insurance in any other country.

When another person takes out insurance in the name of the applicant, the conditions set out in paragraph 5 shall apply.

7. When assessing whether the insurance cover is adequate, consulates shall ascertain whether claims against the insurance company would be recoverable in a Member State.

¹ RO suggested further defining "professional groups".