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#### OUTCOME OF PROCEEDINGS

From:	Visa Working Party/Mixed Committee EU-Iceland/Liechtenstein/Norway/Switzerland)
On:	13 and 14 July 2015
No. prev. doc.:	10353/15 VISA 225 CODEC 946 COMIX 301
No. Cion doc.:	8401/14 VISA 90 CODEC 971 COMIX 201 (COM(2014) 164 final)
Subject:	Draft Regulation of the European Parliament and of the Council on the Union Code on Visas (Visa Code) (recast)

1. At its meeting on 13-14 July 2015, the Working Party examined the drafting suggestions made by the Presidency in 10353/15.
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)<sup>1</sup>**

**(recast)**

***TITLE I***

***GENERAL PROVISIONS***

***Article 1***

**Subject matter and scope**

1. This Regulation establishes the conditions and procedures for issuing visas for intended stays on the territory of the Member States not exceeding 90 days in any 180 days period.
2. The provisions of this Regulation shall apply to any third-country national who must be in possession of a visa when crossing the external borders of the Member States pursuant to Council Regulation (EC) No 539/2001, without prejudice to:
  - (a) the rights of free movement enjoyed by third-country nationals who are family members of citizens of the Union;
  - (b) the equivalent rights enjoyed by third-country nationals and their family members, who, under agreements between the Union and its Member States, on the one hand, and these third countries, on the other, enjoy rights of free movement equivalent to those of Union citizens and members of their families.

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<sup>1</sup> EL, ES, SK entered a scrutiny reservation on the whole text.

3. This Regulation lists the third countries whose nationals are required to hold an airport transit visa by way of exception from the principle of free transit laid down in Annex 9 to the Chicago Convention on International Civil Aviation, and establishes the conditions and procedures for issuing visas for the purpose of transit through the international transit areas of Member States' airports.

## *Article 2*

### **Definitions**

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

1. 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) of the TFEU;
2. 'visa' means an authorisation issued by a Member State with a view to:
  - (a) an intended stay on the territory of the Member States of a duration of no more than 90 days in any 180 days period; or
  - (b) transit through the international transit areas of airports of the Member States;
3. 'uniform visa' means a visa valid for the entire territory of the Member States;
4. 'visa with limited territorial validity' means a visa valid for the territory of one or more Member States but not all Member States;
5. 'airport transit visa' means a visa valid for transit through the international transit areas of one or more airports of the Member States;
6. 'touring visa' means a visa as defined in Article 3(2) of [Regulation No.../...];

7. 'close relatives' means<sup>1</sup> (~~the spouse, children, parents, persons exercising parental authority, grandparents and grandchildren~~):

(a) the spouse;

(b) the partner with whom the Union citizen has contracted a registered partnership<sup>2</sup>, on the basis of the legislation of a Member State and in accordance with the conditions laid down in the relevant legislation of the host Member State;

(c) the direct descendants who are under the age of 21 or are dependents and those of the spouse or partner as defined in point (b);

(d) persons exercising parental authority over a Union citizen or jointly with a Union citizen;

(e) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b);

8. "VIS registered applicant" means a **visa** applicant whose data are registered in the Visa Information System;<sup>3</sup>

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<sup>1</sup> The **Chair** explained that the term "relatives" as used in the definition had been taken from Directive 2004/38/CE. **BE**, supported by **SE, PL, AT, MT, FI, FR, NL** and **BG**, wanted to narrow the scope of the definition since the present one covered too many people, which could lead to abuses. **DE** recalled its scrutiny reservation entered during the first examination and stressed the danger of abuses, in particular as regards point (e). **PT** entered a scrutiny reservation. **COM** said it reserved its final position on that issue. Moreover, COM stressed that abuses under Directive 2004/38/CE were not committed by dependent family members but were mostly related to spouses in the framework of marriages of convenience.

<sup>2</sup> **PL** entered a reservation since contracting a "registered partnership" was not allowed under Polish legislation. Therefore, the **Chair** suggested adding "in the Member States where it is implemented".

<sup>3</sup> **BG** entered a reservation.

9. "VIS registered regular traveller" means a visa applicant<sup>1</sup> **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;<sup>2</sup>
10. 'visa sticker' means the uniform format for visas as defined by Council Regulation (EC) No 1683/95;
11. 'recognised travel document' means a travel document recognised by one or more Member States for the purpose of crossing the external borders and affixing visas, under Decision No 1105/2011/EU of the European Parliament and of the Council;
12. 'valid travel document' means a travel document that is not false, counterfeit or forged and the period of validity of which as defined by the issuing authority has not expired;<sup>3</sup>
13. 'separate sheet for affixing a visa' means the 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 as defined by Council Regulation (EC) No 333/2002;

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<sup>1</sup> **BG** entered a reservation. **AT** wanted to limit the benefits of this provision to nationals of the third-countries who were cooperative regarding readmission. **CH** and **PT** found the suggestion interesting but entered scrutiny reservations. For **HU**, this suggestion could be difficult to implement in practice. **COM** disagreed with the principle of discriminating on the basis of nationality.

<sup>2</sup> **PT**: scrutiny reservation.

<sup>3</sup> **FR** favoured the previous definition and preferred adding "travel document that has not been obtained illegally". **BE** suggested: "travel document that has not been usurped or wrongfully obtained".

14. 'consulate' means a Member State's diplomatic mission or a Member State's consular post authorised to issue visas and headed by a career consular officer as defined by the Vienna Convention on Consular Relations of 24 April 1963;

15. 'application' means an application for a visa;

16. 'seafarer' means any person who is employed or engaged or works in any capacity on board a ship to which the Maritime Labour Convention, 2006 applies.<sup>1</sup>

17. 'accredited professional, cultural, sports or educational association or institution' means any professional, cultural, sports or educational association or institution which is recognised by Member States' relevant authorities.<sup>2</sup>

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<sup>1</sup> **AT** requested adding "mix-seafarers" such as those working on board a ship in internal waters.

<sup>2</sup> **BG** found it problematic. **DE** recalled its scrutiny reservation entered during the first examination and agreed with **BG** since security issues had to be clarified. **PT**, **SE** and **SI** entered scrutiny reservations. **FR** agreed and said that this topic should be discussed at local Schengen cooperation meetings. Along the same lines, **AT**, **SI** and **IT**, supported by **BE**, disagreed with the principle of an accreditation since they believed that the current system in which consulates could decide whether applicants were serious worked well. **SE** stressed that the difference between "accredited" and "recognized" was not very clear and **CH** that there was no procedure for such an accreditation. **LT** had doubts about the relevance of accrediting some associations for unique events. The **Chair** invited delegations to send their suggestions in writing. **COM** was of the opinion that this addition was not useful.

### ***TITLE III***

## ***CONDITIONS AND PROCEDURES FOR***

## ***ISSUING VISAS***

### ***CHAPTER I***

## ***AUTHORITIES TAKING PART IN THE PROCEDURES RELATING TO APPLICATIONS***

### ***Article 4***

#### **Authorities competent for taking part in the procedures relating to applications**

1. Applications shall be examined and decided on by consulates.
2. By way of derogation from paragraph 1, applications may be examined and decided on at the external borders of the Member States by the authorities responsible for checks on persons, in accordance with Articles 32, 33 and 34<sup>1</sup>.
3. In the non-European overseas territories of Member States, applications may be examined and decided on by the authorities designated by the Member State concerned.
4. A Member State may require the involvement of authorities other than the ones referred to in paragraphs 1 and 2 in the examination of and decision on applications<sup>2</sup>.
5. A Member State may require to be consulted or informed by another Member State in accordance with Articles 19 and 28.

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<sup>1</sup> **DE, SE** and **FR** suggested removing the reference to Article 33.

<sup>2</sup> **SE** suggested replacing "require" by "decide". For **COM**, this part had not caused any problem for the last 5 years.

*Article 6*

**Consular territorial competence**

1. An application shall be examined and decided on by the consulate of the competent

Member State in whose jurisdiction the applicant legally resides.

2. A consulate of the competent Member State shall examine and decide on an application lodged by a third-country national legally present but not residing in its jurisdiction, if the applicant has provided justification for lodging the application at that consulate.



**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.
2. ~~Applicants~~ ~~Consulates~~ may ~~be required~~ ~~applicants~~ to obtain an appointment for the lodging of an application. The appointment shall, as a rule, take place within a period of two weeks from the date when the appointment was requested<sup>1</sup>.
3. The consulate ~~shall~~ may allow to lodge the application either without prior appointment or with an ~~immediate~~ appointment arranged as soon as possible within the consulate's office hours to close relatives of Union citizens who:
  - (a) intend to visit their Union citizen close relatives residing in the Member State of their nationality;
  - (b) intend to travel, together with their Union citizen close relatives residing in a third country, to the Member State of which the Union citizen has the nationality.<sup>2</sup>

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<sup>1</sup> **FR** agreed. For **COM**, the consulates could decide how they organized their work. The wording could be fine-tuned by the lawyer-linguists later on.

<sup>2</sup> **DE** entered a scrutiny reservation on paragraph 3. **CH** agreed. **FR**: "within the consulate's office hours" should be removed, as external provider services might have different time schedules. For **SE**, supported by **NL**, **NO**, **AT**, **NL**, **IT** and **FI**, this suggestion went in the right direction but was beyond what was provided in Directive 2004/38/CE. Therefore, **SE** wanted to remove this facilitation for those categories of people. **LV**, while being positive, said that those categories could represent a large proportion of the applicants in some areas. Moreover, removing "immediate" could be to the applicants' detriment. **COM** stated that "shall" should be retained and agreed with **FR**. **COM** suggested replacing "as soon as possible" by "without delay". The **representative of the Council Legal Service** (CLS) recalled that Article 5(2) of Directive 2004/38 mentioned "as soon as possible". Using that term should ensure compliance with that Directive.

4. The consulate shall allow to lodge the application either without prior appointment or with an ~~immediate~~ appointment arranged as soon as possible within the consulate's office hours to family members of Union citizens as referred to in Article 3 of Directive 2004/38/EC<sup>1</sup>.
5. In justified cases of urgency, the consulate ~~shall~~ may allow applicants to lodge their applications either without appointment, or an ~~immediate~~ appointment arranged as soon as possible within the consulate's office hours shall be given<sup>2</sup>.
6. Applications may, without prejudice to Article 12 be lodged:
- (a) by the applicant;
  - (b) by an accredited commercial intermediary referred to in Article 43 or
  - (c) an accredited professional, cultural, sports or educational association or institution.<sup>3</sup>
7. An applicant shall not be required to appear in person at more than one location in order to lodge an application.

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<sup>1</sup> **CH** recalled that Directive 2004/38/CE was not applicable in Switzerland and that this reference might cause legal difficulties. **DK** suggested replacing "shall" by "may" but **BE** disagreed since this paragraph implements an obligation included in Directive 2004/38/CE. **BE** thought that removing "immediate" already provided some flexibility.

<sup>2</sup> For **COM**, "shall" and "immediate" should be retained.

<sup>3</sup> The **Chair** said that the remarks made as regards Article 2(17) concerning accreditations would be taken on board.

## Article 9

### General rules for lodging an application

1. Applicants shall appear in person when lodging an application for the collection of fingerprints, in accordance with Article 12 (2) and (3).
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)<sup>1</sup>**, 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. Applicants shall not be required to appear in person when lodging an application if their permanent impossibility to deliver fingerprints has been previously registered in the VIS less than 59 months before the date of the new application.<sup>2</sup>

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<sup>1</sup> **PT** retained its scrutiny reservation.

<sup>2</sup> **BE, CH**: no added value; it created confusion. **AT** feared misunderstanding would arise if the permanent impossibility had not been clearly registered in the VIS. **BG** and **MT** supported **BE** and **AT**. While **COM** stressed that the important issue was that the applicant be registered in the VIS, it agreed that handicapped persons should not be put in a difficult situation. **COM** stated also that the suggested wording was confusing and proposed that a way to handle that situation be included in the Handbook as it related to something operational. The **Chair** said that one solution could be to take out "temporarily" in the first sentence so as to avoid any indication in the VIS that the impossibility was permanent. **COM** was of the opinion that the reference to Article 12(7)(b) was useless.

3. When lodging the application, the applicant shall:

- (a) present an application form in accordance with Article 10;
- (b) present a travel document in accordance with Article 11;
- (c) present a photograph in accordance with the standards set out in Regulation (EC) No 1683/95 or, where the VIS is operational pursuant to Article 48 of Regulation (EC) No 767/2008, in accordance with the standards set out in Article 12 of this Regulation;
- (d) allow the collection of his fingerprints in accordance with Article 12, where applicable;
- (e) pay the visa fee in accordance with Article 14;
- (f) provide supporting documents in accordance with Article 13 and Annex II.<sup>1</sup>

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<sup>1</sup> **BE, FI, FR, PT, DE, NO** and **NL** wanted point (g) concerning the Travel Medical Insurance (TMI) to be reincorporated in the text.

## Article 10

### Application form

1. Each applicant shall submit a manually or electronically completed ~~and signed~~ application form signed manually or electronically, as set out in Annex I. Persons included in the applicant's travel document shall submit a separate application form. Minors shall submit an application form signed manually or electronically by a person exercising permanent or temporary parental authority or legal guardianship.<sup>1</sup>
2. The content of the electronic version of the application form, if applicable, shall be as set out in Annex I.
3. Consulates shall make the application form widely available and easily accessible to applicants free of charge.
4. The form shall as a minimum be available in the following languages:
  - (a) the official language(s) of the Member State for which a visa is requested; and
  - (b) the official language(s) of the host country.

In addition to the language(s) referred to in point (a), the form may be made available in any other official language(s) of the institutions of the European Union.

5. If the application form is not available in the official language(s) of the host country, a translation of it into that/those language(s) shall be made available separately to applicants.
6. The translation of the application form into the official language(s) of the host country shall be produced under local Schengen cooperation as set out in Article 46.

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<sup>1</sup> **DE**, supported by **AT**, raised the issue of persons unable to sign, e.g. medical emergencies or unaccompanied minors. **BE**, supported by **MT, PT, AT** and **CH**: electronic signature should be optional only. **SE**, while supportive of the suggested change, agreed with **BE**. **COM** said it was necessary to check first whether the Handbook already contained a provision to that effect. Furthermore, **COM** suggested deleting paragraph 5 as it was no longer applicable.

7. The consulate shall inform applicants of the language(s) which may be used when filling in the application form.

### *Article 11*

#### **Travel document**

The applicant shall present a valid travel document satisfying the following criteria:

(a) without prejudice to Article 21(2)<sup>1</sup>, it shall be valid for at least three months after the intended date of departure from the territory of the Member States or, in the case of several visits, after the last intended date of departure from the territory of the Member States.

However, in a justified case of emergency, this obligation may be waived;

(b) it shall contain at least ~~one~~ two consecutive blank ~~double~~ pages, and if several applicants are covered by the same travel document it shall contain ~~one~~ two consecutive blank ~~double~~ pages per applicant;<sup>2</sup>

(c) it shall have been issued<sup>3</sup> within the previous 10 years.

### *Article 12*

#### **Biometric identifiers**

1. Member States shall collect biometric identifiers of the applicant comprising a photograph of him and his 10 fingerprints in accordance with the safeguards laid down in the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, in the Charter of Fundamental Rights of the European Union and in the United Nations Convention on the Rights of the Child.

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<sup>1</sup> **PT** entered a scrutiny reservation since the period of validity of Multiple Entry Visas (MEV) referred to in Art. 21(2) could exceed that of the passports. The **Chair** said that the issue had to be examined by CLS.

<sup>2</sup> **SE**, supported by **AT, MT, FR, DE, SI**, agreed, since the two pages should be blank, not double. **CLS** referred to point 3 of Annex IV to the Schengen Borders Code (Regulation No 562/2006) which provides for the stamp to be entered on the following page if that (double) page cannot be used.

<sup>3</sup> **MT**: "issued" was inaccurate since some third countries validated their passports.

2. At the time of submission of the first application, the applicant shall be required to appear in person. At that time<sup>1</sup>, the following biometric identifiers of the applicant shall be collected:

- a photograph, scanned or taken at the time of application, and
- his 10 fingerprints taken flat and collected digitally.

3. Where fingerprints collected from the applicant as part of an earlier application for a short stay visa or a touring visa were entered in the VIS for the first time less than 59 months before the date of the new application, they shall be copied to the subsequent application.<sup>2</sup>

However, where there is reasonable doubt regarding the identity of the applicant, the consulate shall collect fingerprints within the period specified in the first subparagraph.

Furthermore, if at the time when the application is lodged, it cannot be immediately confirmed that the fingerprints were collected within the period specified in the first subparagraph, the applicant may request that they be collected.

4. In accordance with Article 9(5) of Regulation (EC) No 767/2008, the photograph attached to each application shall be entered in the VIS.

The technical requirements for the photograph shall be in accordance with the international standards as set out in the International Civil Aviation Organization (ICAO) document 9303 Part 1, 6th edition.

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<sup>1</sup> **CH** and **BG** believed the change was superfluous. **COM** agreed.

<sup>2</sup> **FI** asked if the fingerprints would be erased automatically from the VIS after 59 months. In that case, **FI** wondered how the fingerprints of a visa holder could still be checked after that period, for instance in the case of a visa valid for a long period (MEV valid for 5 years). **COM** referred to Article 23 of the VIS Regulation (Regulation (EC) No 767/2008 of 9 July 2008) as regards the retention period for data storage: 5 years. **CLS** referred in particular to Article 23(1)(b) and said that it was necessary to check whether the currently proposed wording ensured that the fingerprints would be retained in the VIS for 5 years following the expiry date of the most recent visa. If necessary, the VIS Regulation could be amended accordingly by the the Regulation under discussion.

5. Fingerprints shall be taken in accordance with ICAO standards and Commission Decision 2006/648/EC.

6. The biometric identifiers shall be collected by qualified and duly authorised staff of the authorities competent in accordance with Article 4(1), (2) and (3). Under the supervision of the consulates, the biometric identifiers may also be collected by qualified and duly authorised staff of an honorary consul as referred to in Article 40 or of an external service provider as referred to in Article 41. The Member State(s) concerned shall, where there is any doubt, provide for the possibility of verifying at the consulate fingerprints which have been taken by the external service provider.



7. The following applicants shall<sup>1</sup> be exempt from the requirement to give fingerprints<sup>2</sup>:

- (a) children under the age of 12;
- (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) heads of State or government and members of a national government with accompanying spouses, and the members of their official delegation when they are invited by Member States' governments or by international organisations for an official purpose;<sup>3</sup>
- (d) sovereigns and other senior members of a royal family, when they are invited by Member States' governments or by international organisations for an official purpose;

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<sup>1</sup> **NL** favoured "may" instead of "shall".

<sup>2</sup> **COM** warned that paragraph 7 was not included in the recast exercise (not shadowed in grey in the Commission's proposal) and should therefore not be up for discussion.

<sup>3</sup> **DE**, supported by **BG**, suggested the following wording as regards points c), d) and e) with a view to clarifying the exemptions concerned :

"c) Heads of state and government and national government members including their accompanying spouses;

d) Monarchs and other high-ranking members of a royal family;

e) Members of the official delegation of any person belonging to categories c) and d) above, provided that these groups of persons are invited by Member State governments or by international organizations for an official purpose;"

**BE**, supported by **SE**, **FR** and **AT**, strongly opposed the idea of amending those points since it thought it dangerous to reopen the discussions on the exemption for those categories of applicants. **CH** entered a scrutiny reservation. **COM** supported **BE** and recalled the difficult discussions at the time of the negotiation of the current Visa Code.

**IT** raised the issue of the official delegations of the Vatican and San Marino in relation to points c) and d). Therefore, **IT** suggested adding "government of those countries" to fill the legal vacuum.

(e) persons in situation of medical urgency attested by a medical certificate<sup>1</sup>;

(f) persons summoned before the International Criminal Court<sup>2</sup>.

8. In the cases referred to in paragraph 7, the entry 'not applicable' shall be introduced in the VIS in accordance with Article 8(5) of Regulation (EC) No 767/2008.

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<sup>1</sup> **FR** and **BE** warned about the false certificates. **BE** said it would be impossible to check the certificate since the applicant would be exempt from giving his/her fingerprints and would not come to the consulate. **PL** supported **BE**.

<sup>2</sup> **NL**: appearance before other tribunals should be covered as well. **SE** entered a reservation on points (e) and (f).

**CHAPTER III**  
**EXAMINATION OF AND DECISION ON AN APPLICATION**

*Article 16*

**Verification of consular competence**

1. When an application has been lodged, the consulate shall verify whether it is competent to examine and decide on it in accordance with the provisions of Articles 5 and 6.
2. If the consulate is not competent, it shall, without delay, return the application form and any documents submitted by the applicant, reimburse the visa fee, and indicate which consulate is competent.

*Article 17*

**Admissibility**

1. The competent consulate shall verify whether:
  - (a) the application has been lodged within the period referred to in Article 8(1),
  - (b) the application contains the items referred to in Article 9(3)(a) to (c),
  - (c) the biometric data of the applicant have been collected, and
  - (d) the visa fee has been collected.
2. Where the competent consulate finds that the conditions referred to in paragraph 1 have been fulfilled, the application shall be admissible and the consulate shall:
  - (a) follow the procedures described in Article 8 of (EC) No 767/2008, and
  - (b) further examine the application.

Data shall be entered in the VIS only by duly authorised consular staff in accordance with Articles 6(1), 7, 9(5) and 9(6) of Regulation (EC) No 767/2008.

3. Where the competent consulate finds that the conditions referred to in paragraph 1 have not been fulfilled, the application shall be inadmissible and the consulate without delay shall:

- (a) return the application form and any documents submitted by the applicant,
- (b) destroy the collected biometric data,
- (c) reimburse the visa fee, and
- (d) not examine the application.

4. By way of derogation, an application that does not meet the requirements set out in paragraph 1 may be considered admissible on humanitarian grounds or for reasons of national interest<sup>1</sup>.

### *Article 18*

#### **Verification of entry conditions and risk assessment**

1. In the examination of an application for a uniform visa, it shall be ascertained whether the applicant fulfils the entry conditions set out in Article 5(1)(a), (c), (d) and (e) of Regulation (EC) No 562/2006, and particular consideration shall be given to assessing whether the applicant presents a risk of irregular immigration or a risk to the security of the Member States and whether the applicant intends to leave the territory of the Member States before the expiry of the visa applied for.

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<sup>2</sup> (...) and the possession of sufficient means of subsistence.<sup>3</sup>

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<sup>1</sup> **CH**, supported by **AT**: "...and of international commitments" to be added.

<sup>2</sup> **PT** suggested deleting "irregular immigration".

<sup>3</sup> **DE**, **FR** and **SE**: scrutiny reservation since the automaticity in applying the presumption could not be agreed. **BE**, supported by **CH**, was of the opinion that such an automaticity could be prevented by applying paragraph 3. **COM** supported **BE** and **CH** and stressed that this provision did not mean automaticity but was only the application of a presumption. Furthermore, **COM** referred to the Schengen Borders Code where the notion of a "valid travel document" was used and advised against deviating too much from that notion.

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**.

4. In respect of each application, the VIS shall be consulted in accordance with Articles 8(2) and 15 of (EC) No 767/2008. Member States shall ensure that full use is made of all search criteria pursuant to Article 15 of Regulation (EC) No 767/2008 in order to avoid false rejections and identifications.

5. Without prejudice to paragraph 2, while checking whether the applicant fulfils the entry conditions, the consulate shall verify:

(a) that the travel document presented is ~~not false, counterfeit or forged~~ a valid travel document;

(b) the applicant's justification for the purpose and conditions of the intended stay, and that he has 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 is in a position to acquire such means lawfully;

(c) whether the applicant is a person for whom an alert has been issued in the Schengen Information System (SIS) for the purpose of refusing entry;

(d) that the applicant is not considered to be a threat to public policy, internal security or public health as defined in Article 2(19) of Regulation (EC) No 562/2006 or to the international relations of any of the Member States, in particular where no alert has been issued in Member States' national databases for the purpose of refusing entry on the same grounds.<sup>1</sup>

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<sup>1</sup> **FR** disagreed with the deletion of the current point (e) of that paragraph, related to the TMI.

6. The consulate shall, where applicable, verify the length of previous and intended stays in order to verify that the applicant has not exceeded the maximum duration of authorised stay in the territory of the Member States, irrespective of possible stays authorised under a touring visa, a national long-stay visa or a residence permit.
7. The means of subsistence for the intended stay shall be assessed in accordance with the duration and the purpose of the stay and by reference to average prices in the Member State(s) concerned for board and lodging in budget accommodation, multiplied by the number of days stayed, on the basis of the reference amounts set by the Member States in accordance with Article 34(1)(c) of Regulation (EC) No 562/2006. Proof of sponsorship and/or private accommodation may also constitute evidence of sufficient means of subsistence.
8. In the examination of an application for an airport transit visa, the consulate shall in particular verify:
- (a) that the travel document presented is ~~not false, counterfeit or forged~~ a valid travel document;
  - (b) the points of departure and destination of the third-country national concerned and the coherence of the intended itinerary and airport transit;
  - (c) proof of the onward journey to the final destination.
9. The examination of an application shall be based notably on the authenticity and reliability of the documents submitted and on the veracity and reliability of the statements made by the applicant.
10. During the examination of an application, consulates may in justified cases carry out an interview and request additional documents<sup>1</sup>.
11. A previous visa refusal shall not lead to an automatic refusal of a new application. A new application shall be assessed on the basis of all available information.

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<sup>1</sup> The **Chair** reported that the end of the sentence was missing. Therefore, the terms "...and information specified in Article 13(1)" should be added there.

## *Article 19<sup>1</sup>*

### **Prior consultation of central authorities of other Member States**

1. A Member State may require the central authorities of other Member States to consult its central authorities during the examination of applications lodged by nationals of specific third countries or specific categories of such nationals. Such consultation shall not apply to applications for airport transit visas.
2. The central authorities consulted shall reply definitively **as soon as possible but not later than** within **seven** calendar days after being consulted. The absence of a reply within this deadline shall mean that they have no grounds for objecting to the issuing of the visa.
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.
4. The Commission shall inform Member States of such notifications.

## *Article 20<sup>2</sup>*

### **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<sup>3</sup>** calendar days in individual cases, notably when further scrutiny of the application is needed.

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<sup>1</sup> **COM** recalled that the Commission retained the deadlines set out in its proposal.

<sup>2</sup> **HU** entered a scrutiny reservation on the whole article.

<sup>3</sup> **DK** wanted to keep the current 60- day deadline.

3. Applications of close relatives of the Union citizens<sup>1</sup> referred to in Article 8(3) and of family members of Union citizens as referred to in Article 3(1) of Directive 2004/38/EC shall be decided on within 5 calendar days<sup>2</sup> of the date of the lodging of an application. That period may be extended up to a maximum of 10 calendar days in individual cases, notably when further scrutiny of the application is needed.

4. The deadlines provided for in paragraph 3<sup>3</sup> shall apply as a maximum to 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.<sup>4</sup>

5. Unless the application has been withdrawn, a decision shall be taken to:

- (a) issue a uniform visa in accordance with Article 21;
- (b) issue a visa with limited territorial validity in accordance with Article 22;
- (c) issue an airport transit visa in accordance with Article 23; or
- (d) refuse a visa in accordance with Article 29.

The fact that fingerprinting is physically impossible, in accordance with Article 12(7)(b), shall not influence the issuing or refusal of a visa.

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<sup>1</sup> **SE**, supported by **NL**, **NO**, **FI**: "close relatives" to be removed since they were not included among the beneficiaries of Directive 2004/38/CE. **COM** recalled the terms of its proposal and stated that the categories referred to in this provision were limited.

<sup>2</sup> **BE**, supported by **IT**, **HR**, **FR**, **SE**, **LV** and **SI**: while the deadlines in paragraphs 1 and 2 could be acceptable at the end of the day, the one in paragraph 3 was much too short, notably in peak season. **BE** suggested "as soon as possible". **IT**: deadline in paragraph 3 was too short since consulates very often needed to further scrutinise the applications lodged by those categories of applicants. **PT** agreed and recalled its scrutiny reservation on paragraphs 1 and 2 since it wanted to keep the deadlines laid down in the current Visa Code. **DK** agreed.

<sup>3</sup> **NL**, supported by **NO** and **FI** favoured "as soon as possible".

<sup>4</sup> **BE** asked what the added value of this paragraph was and stressed that a reference to Article 3(1) of Directive 2004/38/CE should be included. **COM** agreed that the formulation of paragraph 4 had to be revised.



## *CHAPTER IV*

### ***ISSUING OF THE VISA***

#### *Article 22*

#### **Issuing of a visa with limited territorial validity**

1. A visa with limited territorial validity shall be issued exceptionally, in the following cases:
  - (a) when the Member State concerned considers it necessary on humanitarian grounds, for reasons of national interest or because of international obligations,
    - (i) to derogate from the principle that the entry conditions laid down in Article 5(1)(a), (c), (d) and (e) of Regulation (EC) No 562/2006 must be fulfilled;
    - (ii) to issue a visa despite an objection by the Member State consulted in accordance with Article 19 to the issuing of a uniform visa; or
    - (iii) to issue a visa for reasons of urgency, although the prior consultation in accordance with Article 19 has not been carried out;
  - (b) when for reasons deemed justified by the consulate, a new visa is issued for a stay during the same 180-day period to an applicant who, over this 180-day period, has already used a uniform visa or a visa with limited territorial validity allowing for a stay of 90 days.
2. A visa with limited territorial validity shall be valid for the territory of the issuing Member State. It may exceptionally be valid for the territory of more than one Member State, subject to the consent of each such Member State.
3. If the applicant holds a travel document that is not recognised by one or more, but not all Member States, a visa valid for the territory of the Member States recognising the travel document shall be issued. If the issuing Member State does not recognise the applicant's travel document, the visa issued shall only be valid for that Member State.

4. When a visa with limited territorial validity has been issued in the cases described in paragraph 1(a), the central authorities of the issuing Member State shall circulate the relevant information to the central authorities of the other Member States without delay, by means of the procedure referred to in Article 16(3) of Regulation (EC) No 767/2008.

5. The data set out in Article 10(1) of Regulation (EC) No 767/2008 shall be entered into the VIS when a decision on issuing such a visa has been taken.

### *Article 23*

#### **Issuing of an airport transit visa**

1. An airport transit visa shall be valid for transiting through the international transit areas of the airports situated on the territory of Member States.

2. Without prejudice to Article 11(a), the period of validity of the visa shall include a 'period of grace' of 15 days.

Member States may decide not to grant such a period of grace for reasons of public policy or because of the international relations of any of the Member States.

3. Without prejudice to Article 11(a), multiple airport transit visas may be issued with a period of validity of a maximum six months.

4. The following criteria in particular are relevant for taking the decision to issue multiple airport transit visas:

(a) the applicant's need to transit frequently and/or regularly; and

(b) the integrity and reliability of the applicant, in particular the lawful use of previous uniform visas, visas with limited territorial validity or airport transit visas, his economic situation in his country of origin and his genuine intention to pursue his onward journey.

5. If the applicant is required to hold an airport transit visa in accordance with the provisions of Article 3(2), the airport transit visa shall be valid only for transiting through the international transit areas of the airports situated on the territory of the Member State(s) concerned.

6. The data set out in Article 10(1) of Regulation (EC) No 767/2008 shall be entered into the VIS when a decision on issuing such a visa has been taken.

#### *Article 24*

#### **Filling in the visa sticker**

1. When the visa sticker is filled in the machine-readable zone shall be filled in, as provided for in ICAO document 9303, Part 2.

2. The Commission shall by means of implementing acts adopt the details for filling in the visa sticker. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 51(2).

3. Member States may add national entries in the ‘comments’ section of the visa sticker including the specific travel purpose<sup>1</sup>, which shall ~~neither not~~ duplicate the entries established in accordance with the procedure referred to in paragraph 2 ~~nor indicate a specific travel purpose~~.

4. All entries on the visa sticker shall be printed, and no manual changes shall be made to a printed visa sticker.

5. A visa sticker for a single entry visa may be filled in manually only in case of technical force majeure. No changes shall be made to a manually filled in visa sticker.

6. When a visa sticker is filled in manually in accordance with paragraph 4 of this Article, this information shall be entered into the VIS in accordance with Article 10(1)(k) of Regulation (EC) No 767/2008.

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<sup>1</sup> **BE, CZ, FR, CH** supported the amendment. However, BE and CH believed it was sufficient to delete the last part of the sentence only ("nor indicate a specific travel purpose"). **COM** disagreed with the new wording since it was of the opinion that the indication of the travel purpose was outdated. That purpose could indeed change while the visa remained valid. However, **AT** stressed that indicating the travel purpose facilitated the security checks.

## *Article 25*

### **Invalidation of a completed visa sticker**

1. If an error is detected on a visa sticker which has not yet been affixed to the travel document, the visa sticker shall be invalidated.
2. If an error is detected after the visa sticker has been affixed to the travel document, the visa sticker shall be invalidated by drawing a cross with indelible ink on the visa sticker, the optically variable device shall be destroyed and a new visa sticker shall be affixed to a different page.
3. If an error is detected after the relevant data have been introduced into the VIS in accordance with Article 10(1) of Regulation (EC) No 767/2008, the error shall be corrected in accordance with Article 24(1) of that Regulation.

## *Article 26*

### **Affixing a visa sticker**

1. The printed visa sticker containing the data provided for in Article 24 shall be affixed to the travel document.
2. The Commission shall by means of implementing acts adopt the details for affixing the visa sticker. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 51(2).
3. Where the issuing Member State does not recognise the applicant's travel document, the separate sheet for affixing a visa shall be used.
4. When a visa sticker has been affixed to the separate sheet for affixing a visa, this information shall be entered into the VIS in accordance with Article 10(1)(j) of Regulation (EC) No 767/2008.
5. Individual visas issued to persons who are included in the travel document of the applicant shall be affixed to that travel document.
6. Where the travel document in which such persons are included is not recognised by the issuing Member State, the individual stickers shall be affixed to the separate sheets for affixing a visa.

*Article 27*

**Rights derived from an issued visa**

Mere possession of a uniform visa or a visa with limited territorial validity shall not confer an automatic right of entry.

*Article 28*

**Informing central authorities of other Member States**

1. A Member State may require that its central authorities be informed of visas issued by consulates of other Member States to nationals of specific third countries or to specific categories of such nationals, except in the case of airport transit visas.
2. Member States shall notify the Commission of the introduction or withdrawal of the requirement for such information at the latest 15 calendar days before it becomes applicable. This information shall also be given within local Schengen cooperation in the jurisdiction concerned.
3. The Commission shall inform Member States of such notifications.

### Refusal of a visa

1. Without prejudice to Article 22(1), a visa shall be refused:
  - (a) if the applicant:
    - (i) presents a travel document which is ~~false, counterfeit or forged~~ not a valid travel document;
    - (ii) does not provide justification for the purpose and conditions of the intended stay;
    - (iii) does not provide proof of 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 is not in a position to acquire such means lawfully;
    - (iv) has already stayed for 90 days during the current 180-day period on the territory of the Member States on the basis of a uniform visa or a visa with limited territorial validity;
    - (v) is a person for whom an alert has been issued in the SIS for the purpose of refusing entry;
    - (vi) is considered to be a threat to public policy, internal security or public health as defined in Article 2(19) of Regulation (EC) No 562/2006 or to the international relations of any of the Member States, in particular where an alert has been issued in Member States' national databases for the purpose of refusing entry on the same grounds; or<sup>1</sup>

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<sup>1</sup> **BE, FR and DK** disagreed with the deletion of point (vii) of the current Visa Code, related to the TMI. **PT** supported BE and stated that it would send some drafting suggestions concerning other grounds for refusal. **FR** endorsed that idea and suggested adding the unpaid hospital bills. **COM** strongly disagreed that a visa could be refused solely on the basis that the applicant had not been provided with a TMI or had an invalid one. Moreover, COM referred to the case law concerning the entry conditions set out in Article 5 of the Schengen Borders Code, in which there was no reference to the TMI.

(b) if there are reasonable doubts as to the authenticity of the supporting documents submitted by the applicant or the veracity of their contents, the reliability of the statements made by the applicant or his intention to leave the territory of the Member

States before the expiry of the visa applied for.

2. A decision on refusal and the reasons on which it is based shall be notified to the applicant by means of the standard form set out in Annex V.

3. Applicants who have been refused a visa shall have the right to appeal. Appeals shall be instituted against the Member State that has taken the final decision on the application and in accordance with the national law of that Member State. Member States shall provide applicants with detailed information<sup>1</sup> regarding the procedure to be followed in the event of an appeal, as specified in Annex V.

4. Information on a refused visa shall be entered into the VIS in accordance with Article 12 of Regulation (EC) No 767/2008.

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<sup>1</sup> SE wanted to add some clarification about the information to be given. COM referred to paragraph 2 and stated that detailed information had to be given in writing via a standard form.

**CHAPTER V**  
**MODIFICATION OF AN ISSUED VISA**

*Article 30*

**Extension**

1. The period of validity and/or the duration of stay of an issued visa shall be extended where the competent authority of a Member State considers that a visa holder has provided proof of force majeure or humanitarian reasons preventing him from leaving the territory of the Member States before the expiry of the period of validity of or the duration of stay authorized by the visa. Such an extension shall be granted free of charge.



2. The period of validity and/or the duration of stay of an issued visa may be extended if the visa holder provides proof of serious personal reasons justifying the extension of the period of validity or the duration of stay. The visa holder shall pay a visa fee for such an extension. The Commission shall by means of implementing acts fix the amount of the visa fee, which can be no less than EUR 30<sup>1</sup>. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 51(2).
3. Unless otherwise decided by the authority extending the visa, the territorial validity of the extended visa shall remain the same as that of the original visa.
4. The authority competent to extend the visa shall be that of the Member State on whose territory the third-country national is present at the moment of applying for an extension.

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<sup>1</sup> **CH**, supported by **AT**, suggested not mentioning an amount of money but including something along the following lines: "half of the standard fee". **CZ** favoured a fee fixed by the Visa Code, not by an implementing act. **COM**, while wondering why it had to be so expensive for an extension, recalled that this amendment had been made to a part of the text which was not included in its proposal (so-called "white part").

As regards the visa fee in general, **AT** stressed that it had to be increased since the administrative costs for handing the visa applications would be higher following the recast of the Visa Code. Therefore, **AT** made the following drafting suggestion concerning Article 14:

**"Visa fee**

1. Applicants shall pay a visa fee in accordance with Annex XX.

2. Within 6 months of 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 Annex XX 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)."

**BE** and **SE** supported the idea. **COM** wondered why those costs would be higher. Furthermore, **COM** asked whether Member States would return the money to applicants when they obtained less than they had asked for (MEV of one year instead of three). **AT**, supported by **SK**, replied that applicants had to pay for the examination of an application, not for a visa sticker. Moreover, **AT** was of the opinion that the more entries the applicant obtained, the more he/she had to pay. **MT**, while recognising that fixing the exact amount of costs for the treatment of a visa was difficult, suggested finding a formula to be applied by all Member States for determining the visa fee. **HU** stated that the issue of fees had to be further examined. The issue of the service fee (requested by external service providers) and the political aspect of the visa fees (as in Visa Facilitation Agreements, for instance) had to be better scrutinised. **COM** warned that raising the issue of the visa fees in general and suggesting linking the high of the fees to the length of the visa in particular, would severely jeopardise the negotiations with the European Parliament.

5. Member States shall notify to the Commission the authorities competent for extending visas.
  6. Extension of visas shall take the form of a visa sticker.
  7. Information on an extended visa shall be entered into the VIS in accordance with Article 14 of Regulation (EC) No 767/2008.
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