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OUTCOME OF PROCEEDINGS

From:	Visa Working Party/Mixed Committee EU-Iceland/Liechtenstein/Norway/Switzerland)
On:	22 and 23 January 2015
Subject:	Draft Regulation of the European Parliament and of the Council on the Union Code on Visas (Visa Code) (recast)

1. At its meeting of 22-23 January 2015 the Working Party examined Articles 32 to 55 of the abovementioned draft Regulation as set out in 8401/14.

2. The text of the aforementioned Articles is included in the Annex. Comments in relation to the provisions of the Articles are set out in the footnotes to the Annex.

ANNEX

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the Union Code on Visas (Visa Code)

(recast)

CHAPTER VI

VISAS ISSUED AT THE EXTERNAL BORDERS

Article 32

Visas applied for exceptionally at the external border

1. In exceptional cases, visas may be issued at border crossing points if the following conditions are satisfied:

(a) the applicant fulfils the conditions laid down in Article 5(1)(a), (c), (d) and (e) of Regulation (EC) No 562/2006;

(b) the applicant has not been in a position to apply for a visa in advance and submits, if required, supporting documents substantiating unforeseeable and imperative reasons for entry; and

(c) the applicant's return to his country of origin or residence or transit through States other than Member States fully implementing the Schengen *acquis* is assessed as certain.

2[1]. A visa issued at the external border shall be a uniform visa, entitling the holder to stay for a maximum duration of 15 days, depending on the purpose and conditions of the intended stay. In the case of transit[2], the length of the authorised stay shall correspond to the time necessary for the purpose of the transit.

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[1] **FR** and **PL** : paragraph 2 of the current Visa Code to be maintained.

[2] **BE** suggested deleting the reference to transit, which **COM** could agree on.

3. Where the conditions laid down in Article 5(1)(a), (c), (d) and (e) of Regulation (EC) No 562/2006 are not fulfilled, the authorities responsible for issuing the visa at the border may issue a visa with limited territorial validity, in accordance with Article 22(1)(a)[1] of this Regulation, for the territory of the issuing Member State only.

4. A third-country national falling within a category of persons for whom prior consultation is required in accordance with Article 19 shall, in principle, not be issued a visa at the external border.

However, a visa with limited territorial validity for the territory of the issuing Member State may be issued at the external border for such persons in exceptional cases, in accordance with Article 22(1)(a)[1].

5. In addition to the reasons for refusing a visa as provided for in Article 29(1) a visa shall be refused at the border crossing point if the conditions referred to in paragraph 1(b) of this Article are not met.

6. The provisions on justification and notification of refusals and the right of appeal set out in Article 29(3) and Annex V shall apply.

[1] **DE**: reference to Article 22(1)(b) to be added. **COM** questioned its practical value since the kind of situation covered by Art.22(1)(b) had never arisen .

Article 33

Visas applied for at the external border under a temporary scheme[1]

1. In view of promoting short term tourism, a Member State may decide to temporarily issue visas at the external border to persons fulfilling the conditions set out in Article 32(1)(a) and (c).

2. The duration of such a scheme shall be limited to 5[2] months in any calendar year and the categories of beneficiaries shall be clearly defined.

3. By way of derogation from Article 22(1), a visa issued under such a scheme shall be valid only for the territory of the issuing Member State and shall entitle the holder to stay for a maximum duration of 15 calendar days[3], depending on the purpose and conditions of the intended stay.[4]

4. Where the visa is refused at the external border, the Member State cannot impose the obligations set out in Article 26 of the Convention Implementing the Schengen Agreement on the carrier concerned[5].

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1 **BE, NL, AT, FI, DE, SE, FR, CH, LT, CZ, NO, DK, HU** and **EE**: not in favour of such a scheme for security reasons. The evaluation of the applicant at the border cannot be as thorough as in consulates (prior consultation, taking of the fingerprints) and even if only an LTV is issued, the holder of the visa can anyway travel to other Member States. **FI, LT, PL** and **IT** entered a reservation. **ES** and **HU** suggested discussing the issue in the Working Party on Frontiers. **ES, SK** and **IT** were not against but had doubts concerning the practical application of the scheme (prior consultation, what if the visa was refused at the border ?) **IT** stressed that some further conditions had to be introduced as regards the categories of beneficiaries of the scheme. **SI**, while supporting the scheme, stated that safeguards had to be provided, e.g. the obligation to apply only in groups for a visa under such a scheme. **EL** expressed support for the scheme by referring to the positive experience of pilot projects of the same kind already implemented in Greece.

2 **EL** would prefer 5 to 7 months.

3 **PT**: suggested 21 calendar days.

4 **HR** asked whether the visa was valid for one border crossing or several.

5 **BE**, **DE, PT, CH, SK** and **HU** expressed concerns regarding the carrier's exemption from liability as regards situations where the visa is refused at the border. **FR** feared that if the carrier was no longer in a position to refuse to embark people who are not holding a visa, it would entail an increase in asylum applications at the border.

5. Member States shall notify the envisaged schemes to the European Parliament, the Council and the Commission at the latest three months before the start of their implementation. The notification shall define the categories of beneficiaries, the geographical scope, the organisational modalities of the scheme and the measures envisaged to ensure the verification of the visa issuing conditions.

The Commission shall publish this notification in the Official Journal of the European Union.

6. Three months after the end of the scheme, the Member State concerned shall submit a detailed implementation report to the Commission. The report shall contain information on the number of visas issued and refused (including citizenship of the persons concerned); duration of stay, return rate (including citizenship of persons not returning).[1]

[1] **DE** and **PT** were of the opinion that this information was difficult to report for Member States. **COM** stressed the exceptional and temporary character of the scheme. Moreover, **COM** stated that in terms of security, an LTV issued under the scheme would entail the same risks as other LTV's. As regards third-country nationals subject to prior consultation, COM referred to Article 32(4). Furthermore, COM recalled that the VIS would also be available at the border crossing points as once this draft regulation was adopted, the VIS would be rolled out worldwide. Finally, COM explained that the obligations referred to in paragraph 4 concern the penalties that Member States can impose on carriers, not the obligation for the carriers to return the person who has been refused a visa.

Article 34

Visas issued to seafarers[1] at the external border

1. A seafarer who is required to be in possession of a visa when crossing the external borders of the Member States may be issued with a visa at the border where:

(a) he fulfils the conditions set out in Article 32(1); and

(b) he is crossing the border in question in order to embark on, re-embark on or disembark from a ship on which he will work or has worked as a seafarer.

2. Before issuing a visa at the border to a seafarer, the competent national authorities shall make sure that the necessary information concerning the seafarer in question has been exchanged.

3. The Commission shall by means of implementing acts adopt operational instructions for issuing visas at the border to seafarers. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 51(2).

4. This Article shall apply without prejudice to Article 31(2), (3) and (4).

[1] In reply to a question put by **PL** concerning the terminology (seafarer, seaman, crew), **COM** referred to the definition of "seafarer" set out in Article 2(16).

TITLE IV

ADMINISTRATIVE MANAGEMENT AND ORGANISATION

Article 35

Organisation of visa sections

1. Member States shall be responsible for organising the visa sections of their consulates.

In order to prevent any decline in the level of vigilance and to protect staff from being exposed to pressure at local level, rotation schemes for staff dealing directly with applicants shall be set up, where appropriate. Particular attention shall be paid to clear work structures and a distinct allocation/division of responsibilities in relation to the taking of final decisions on applications. Access to consultation of the VIS and the SIS and other confidential information shall be restricted to a limited number of duly authorised staff. Appropriate measures shall be taken to prevent unauthorised access to such databases.

2. The storage and handling of visa stickers shall be subject to adequate security measures to avoid fraud or loss. Each consulate shall keep an account of its stock of visa stickers and register how each visa sticker has been used.

3. Member States' consulates shall keep archives of applications. Each individual file shall contain the application form, copies of relevant supporting documents, a record of checks made and the reference number of the visa issued, in order for staff to be able to reconstruct, if need be, the background for the decision taken on the application.[1]

Individual application files shall be kept for a minimum of two years from the date of the decision on the application as referred to in Article 20(1).

Article 36

Resources for examining applications and monitoring of consulates

1. Member States shall deploy appropriate staff in sufficient numbers to carry out the tasks relating to the examining of applications, in such a way as to ensure reasonable and harmonised quality of service to the public.

2. Premises shall meet appropriate functional requirements of adequacy and allow for appropriate security measures.

3. Member States' central authorities shall provide adequate training to both expatriate staff and locally employed staff and shall be responsible for providing them with complete, precise and up-to-date information on the relevant Union and national law.

4. Member States' central authorities shall ensure frequent and adequate monitoring of the conduct of examination of applications and take corrective measures when deviations from the provisions of this Regulation are detected.

[1] **FR,** supported by **DE, EL, ES** suggested that application files be kept for 18 months instead of 2 years, with the exception of consulates located in certain third countries where the files should be kept longer for security reasons. **DE** entered a scrutiny reservation. **IT** reported on the costs of the storage, in particular in locations where a high number of visas were issued. **AT** questioned the need to have so many documents to be kept for each individual file. **COM** replied that issuing more MEVs could constitute a way to reduce the number of files to be archived. COM, however, while recalling that the "two -year period" had been included in the current version of the Visa Code as requested by delegations at the time it was negotiated, said that this period could be amended. Furthermore, as regards a question raised by **HU** and **PL**, **COM** replied that this provision covered both paper and electronic files.

Article 37

Conduct of staff

1. Member States' consulates shall ensure that applicants are received courteously.

2. Consular staff shall, in the performance of their duties, fully respect human dignity. Any measures taken shall be proportionate to the objectives pursued by such measures.

3. While performing their tasks, consular staff shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Article 38

Consular organisation and cooperation

1. Each Member State shall be responsible for organising the procedures relating to applications.

2. Member States shall:

(a) equip their consulates and authorities responsible for issuing visas at the borders with the required material for the collection of biometric identifiers, as well as the offices of their honorary consuls, whenever they make use of them, to collect biometric identifiers in accordance with Article 40;

(b) cooperate with one or more other Member States under representation arrangements or any other form of consular cooperation.

3. A Member State may also cooperate with an external service provider in accordance with Article 41. [1]

[1] **DE** entered a scrutiny reservation. While welcoming the increase use of external service providers (ESP) it wanted first an assessment as to how that increase had worked in practice. **HU, BE** and **PT** disagreed with the abolition of the principle that applicants should have the possibility to lodge their application either in the consulates or in the ESP (parallel access), in particular for humanitarian reasons. **NO** asked whether consulates could still call the applicant for an interview. **COM** stated that although the requirement to maintain the possibility for applicants to lodge their applications directly at the consulate had been cancelled (deletion of paragraph 3 of Article 17 of the current Visa Code), consulates could still provide such access on an individual basis.

4. Member States shall notify to the Commission their consular organisation and cooperation in each consular location.[1]

5. In the event of termination of cooperation with other Member States, Member States shall assure the continuity of full service.[2]

Article 39

Representation arrangements[3]

1. A Member State may agree to represent another Member State that is competent in accordance with Article 5 for the purpose of examining applications and issuing visas on behalf of that Member State. A Member State may also represent another Member State in a limited manner only for the collection of applications and the enrolment of biometric identifiers.[4]

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1 **PL,** supported by **SE** and **IT** wondered what Member States had to notify exactly. **COM** was of the opinion that the amended text was much clearer than the former and replied that information such as the presence or absence of a consulate , the use of outsourcing or cooperation was sufficient.

2 **CH**, supported by **SE** and **PT,** asked for the text of this paragraph to be reformulated since ensuring such continuity could be problematic. **NO** asked what "full service" meant; it was supported by IT which put forward some practical examples. **COM** replied that this provision was simply copied from Article 41(3) of the current Visa Code, which had been applied without any problem since the entry into force of the current Visa Code.

3 **CZ** entered a scrutiny reservation.

4 **DK, CH** and **DE** were against the deletion of paragraph 2 of the current Visa Code. **COM** believed that there was no justification for maintaining a "droit de regard" since Member States should trust the relevant Member State in the case of representation.
CLS invoked the general principle of freedom for Member States to conclude representation arrangements stemming from Article 39(1). CLS was of the opinion that paragraph 1 had to be redrafted more prescriptively if the aim was to limit representation to two forms only. In that regard, CLS said it was not sufficient to delete the current paragraph 2. **COM** replied that the issue had to be further discussed but that it could be indicated in paragraph 1 that the representing Member State could decide to refuse the visa. Furthermore, **CLS** asked what would happen with the existing arrangements, should the representation they provided be inappropriate for those two forms. **COM** disagreed since it was of the opinion that there would be an obligation to align the existing arrangements to the new legal rules. Finally, due to the different forms of representation, **CLS** stated that in the case of a visa refusal , it was not clear for the applicant where he had to lodge his appeal. **COM** replied that perfect consistency could be ensured with the Member State that took the final decision.

2. Where the representation is limited to the collection of applications, the collection and transmission of files and data to the represented Member State shall be carried out in compliance with the relevant data protection and security rules.

3. A bilateral arrangement shall be established between the representing Member State and the represented Member State. That arrangement:

(a) shall specify the duration of the representation, if only temporary, and the procedures for its termination;

(b) may, in particular when the represented Member State has a consulate in the third country concerned, provide for the provision of premises, staff and payments by the represented Member State.[1]

4. Member States lacking their own consulate in a third country shall endeavour to conclude representation arrangements with Member States that have consulates in that country.

5. With a view to ensuring that a poor transport infrastructure or long distances in a specific region or geographical area do not require a disproportionate effort on the part of applicants to have access to a consulate, Member States lacking their own consulate in that region or area shall endeavour to conclude representation arrangements with Member States that have consulates in that region or area.

6. The represented Member State shall notify the representation arrangements or the termination of those arrangements to the Commission at least two months before they enter into force or are terminated.[2]

7. The consulate of the representing Member State shall, at the same time that the notification referred to in paragraph 6 takes place, inform both the consulates of other Member States and the delegation of the European Union in the jurisdiction concerned about representation arrangements or the termination of such arrangements.

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[1] **DK, CH** and **DE** opposed the deletion of points (c) and (d) of paragraph 3 of the current Visa Code. **BE** was of the opinion that point (c) was no longer necessary since the Common Consular Instructions and, in particular, its Annex 5C had been repealed, which **COM** could agree on.

[2] **DK** and **PT** opposed the suggested amendments since it wanted those procedures to be kept more flexible. **PL, AT, CH, ES, SE**,**PT, SI** and **FI** suggested referring to a shorter deadline than two months. **COM** stated that a definitive time-limit could be further discussed but stressed that the information had to be circulated locally in good time, in particular in order to let the applicants know.

8. If the consulate of the representing Member State decides to cooperate with an external service provider in accordance with Article 41, or with accredited commercial intermediaries as provided for in Article 43, that cooperation shall include applications covered by representation arrangements. The central authorities of the represented Member State shall be informed in advance of the terms of such cooperation.

Article 40

Recourse to honorary consuls[1]

1. Honorary consuls may be authorised to perform some or all of the tasks referred to in Article 41(5). Adequate measures shall be taken to ensure security and data protection.

2. Where the honorary consul is not a civil servant of a Member State, the performance of those tasks shall comply with the requirements set out in Annex VI, except for the provisions in point D(c) of that Annex.

3. Where the honorary consul is a civil servant of a Member State, the Member State concerned shall ensure that requirements comparable to those which would apply if the tasks were performed by its consulate are applied.

Article 41

Cooperation with external service providers

1. Member States shall endeavour to cooperate with an external service provider together with one or more Member States, without prejudice to public procurement and competition rules.

2. Cooperation with an external service provider shall be based on a legal instrument that shall comply with the requirements set out in Annex VI.

[1] **COM:** provision maintained under conditions set out in the article since some Member States have notified the Commission that they still have recourse to honorary consuls.

3. The examination of applications, interviews (where appropriate), the decision on applications and the printing and affixing of visa stickers shall be carried out only by the consulate.

4. External service providers shall not have access to the VIS under any circumstances. Access to the VIS shall be reserved exclusively to duly authorised staff of consulates.

5. An external service provider may be entrusted with the performance of one or more of the following tasks:

(a) providing general information on visa requirements and application forms;

(b) informing the applicant of the required supporting documents, on the basis of a checklist;

(c) collecting data and applications (including collection of biometric identifiers) and transmitting the application to the consulate;

(d) collecting the visa fee;

(e) managing appointments for the applicant, where applicable, at the consulate or at the external service provider;

(f) collecting the travel documents, including a refusal notification if applicable, from the consulate and returning them to the applicant.

6. When selecting an external service provider, the Member State(s) concerned shall scrutinise the solvency and reliability of the company, including the necessary licences, commercial registration, company statutes, bank contracts, and ensure that there is no conflict of interests[1].

7. The Member State(s) concerned shall ensure that the external service provider selected complies with the terms and conditions assigned to it in the legal instrument referred to in paragraph 2.

8. The Member State(s) concerned shall remain responsible for compliance with data protection rules for the processing of data and shall be supervised in accordance with Article 28 of Directive 95/46/EC.

[1] **DE** suggested adding a sentence in relation to the compulsory security clearance of all ESPs.

Cooperation with an external service provider shall not limit or exclude any liability arising under the national law of the Member State(s) concerned for breaches of obligations with regard to the personal data of applicants or the performance of one or more of the tasks referred to in paragraph 5. This provision is without prejudice to any action which may be taken directly against the external service provider under the national law of the third country concerned.

9. The Member State(s) concerned shall provide training to the external service provider, corresponding to the knowledge needed to offer an appropriate service and sufficient information to applicants.

10. The Member State(s) concerned shall closely monitor the implementation of the legal instrument referred to in paragraph 2, including:

(a) the general information on visa requirements and application forms provided by the external service provider to applicants;

(b) all the technical and organisational security measures required to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the cooperation involves the transmission of files and data to the consulate of the Member State(s) concerned, and all other unlawful forms of processing personal data;

(c) the collection and transmission of biometric identifiers;

(d) the measures taken to ensure compliance with data protection provisions.

To this end, the consulate(s) of the Member State(s) concerned shall, on a regular basis, carry out spot checks on the premises of the external service provider.

11. In the event of termination of cooperation with an external service provider, Member States shall ensure the continuity of full service.

12. Member States shall provide the Commission with a copy of the legal instrument referred to in paragraph 2. By 1st January each year, Member States shall report to the Commission on their cooperation with and monitoring (as referred to in Annex VI, point C) of external service providers worldwide.[1]

Article 42

Encryption and secure transfer of data

1. In the case of cooperation among Member States and cooperation with an external service provider and recourse to honorary consuls, the Member State(s) concerned shall ensure that the data are fully encrypted, whether electronically transferred or physically transferred on an electronic storage medium.

2. In third countries which prohibit encryption of data to be electronically transferred the Member State(s) concerned shall not allow to transfer data electronically.

In such a case, the Member State(s) concerned shall ensure that the electronic data are transferred physically in fully encrypted form[2] on an electronic storage medium by a consular officer[3] of a Member State or, where such a transfer would require disproportionate or unreasonable measures to be taken, in another safe and secure way, for example by using established operators experienced in transporting sensitive documents and data in the third country concerned.

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[1] **PL, DK, SE** : against the idea of an annual report. **FR** and **ES** were concerned as regards the fiscal consequences of the reporting requirement. **NO** agreed with FR and was of the opinion that Schengen Evaluation had to deal with such monitoring. **PT** supported FR and NO**. IT** agreed and suggested designing a standard format for such a report. **CH, FI, HR, ES**: 1st January is too early. Should be a bit later in the year to give Member States the time to collect their statistics, for instance. **COM**: reporting exercise is an added value for each Member State. Could be further discussed in the Visa Committee; a standard structure for such a report could be designed; as long a it remained annual, the report could be done at a different date.

[2] **HR**: the encryption level should be specified as it is not the same for all Member States. **COM** : no reason to harmonise as it does not create any problem in practice.

[3] **PL** suggested replacing "by a consular officer" by "by the consulate". **COM** disagreed since this operation could not be carried out by a member of the local staff.

3. In all cases the level of security for the transfer shall be adapted to the sensitive nature of the data.

4. The Union shall endeavour to reach agreement with the third countries concerned with the aim of lifting the prohibition against encryption of data to be electronically transferred.

Article 43

Member States' cooperation with commercial intermediaries

1. Member States may accept the lodging of applications by a private administrative agency[1], a transport company or a travel agency, such as a tour operator or a retailer (commercial intermediaries), except for the collection of biometric identifiers.

2. Cooperation with commercial intermediaries shall be based on the granting of an accreditation by Member States' relevant authorities. The accreditation shall, in particular, be based on the verification of the following aspects:

(a) the current status of the commercial intermediary: current licence, the commercial register, contracts with banks;

(b) existing contracts with commercial partners based in the Member States offering accommodation and other package tour services;

(c) contracts with transport companies, which must include an outward journey, as well as a guaranteed and fixed return journey.

3. Accredited commercial intermediaries shall be monitored regularly by spot checks involving personal or telephone interviews with applicants, verification of trips and accommodation, and wherever deemed necessary, verification of the documents relating to group return.

[1] **AT**, supported by **NO**, suggested deleting "private administrative agency". **COM** could agree if everyone could support the deletion.

4. Within local Schengen cooperation, information shall be exchanged on the performance of the accredited commercial intermediaries concerning irregularities detected and refusal of applications submitted by commercial intermediaries, and on detected forms of travel document fraud and failure to carry out scheduled trips.

5. Within local Schengen cooperation, lists shall be exchanged of commercial intermediaries to which accreditation has been given by each consulate and from which accreditation has been withdrawn, together with the reasons for any such withdrawal.

Each consulate shall inform the public about the list of accredited commercial intermediaries with which it cooperates.

Article 44

Compilation of statistics[1]

Member States shall compile annual statistics on visas, in accordance with Annex VIII. These statistics shall be submitted by 1 March for the preceding calendar year.

[1] **COM**: much more detailed statistics are needed but this should not constitute a major problem for Member States as all data categories set out in Annex VIII are to be found in the VIS. **BE, AT, FR, PL, DE** and **PT** entered a scrutiny reservation.

Article 45

Information to be provided to the public

1. Member States' central authorities and consulates shall provide the public with all relevant information in relation to the application for a visa, in particular:

(a) the criteria, conditions and procedures for applying for a visa;

(b) the means of obtaining an appointment, if applicable;

(c) where the application may be submitted;

(d) accredited commercial intermediaries;

(e) the time limits for examining applications provided for in Article 20(1), (2) and (3);

(f) the third countries whose nationals or specific categories of whose nationals are subject to prior consultation or information;

(g) that negative decisions on applications must be notified to the applicant, that such decisions must state the reasons on which they are based and that applicants whose applications are refused have a right to appeal, with information regarding the procedure to be followed in the event of an appeal, including the competent authority, as well as the time limit for lodging an appeal;

(h) that mere possession of a visa does not confer an automatic right of entry and that the holders of visa are requested to present proof that they fulfil the entry conditions at the external border, as provided for in Article 5 of Regulation (EC) No 562/2006.

2. The representing and represented Member State shall inform the general public about representation arrangements as referred to in Article 39 before such arrangements enter into force.

3. The Commission shall establish a standard information template for the implementation of the provisions of paragraph 1.

4. The Commission shall establish a Schengen visa Internet website containing all relevant information relating to the application for a visa.

TITLE V

LOCAL SCHENGEN COOPERATION

Article 46

Local Schengen cooperation between Member States' consulates

1. In order to ensure a harmonised application of the common visa policy taking into account, where appropriate, local circumstances, Member States' consulates and the Commission shall cooperate within each jurisdiction, in particular to:

(a) prepare a harmonised list of supporting documents to be submitted by applicants, taking into account Article 13 and Annex II;[1]

(b) ensure a common translation of the application form in accordance with Article 10(6);

(c) establish the of travel documents issued by the host country and update it regularly.

2. Within local Schengen cooperation a common information sheet shall be established on the basis of the standard information template drawn up by the Commission under Article 45(3).

3. Member States within local Schengen cooperation shall exchange the following[2]:

(a) quarterly statistics on uniform visas, visas with limited territorial validity, airport transit visas and touring visas applied for, issued and refused;

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[1] **FR,** supported by **BE**: not possible to draw up such a list everywhere in the world. Therefore, "where appropriate" should be added. **COM** disagreed since it would conflict with the need to harmonise. **BE:** assessment of the need to draw up a list is deleted. What then in locations where only one Member State is present and represents the others ? **COM** replied that it should be further discussed . **NL**: no need to have such a harmonised list in all locations. Therefore, "and assess the need to draw up " should be kept. **PL** disagreed.

[2] **AT**: more important for Member States to obtain information on the actual granting of visas. **COM** : that information will be available once the VIS has been rolled-out worldwide.

(b) information with regard to the assessment of migratory and/or security risks, in particular on:

(i) the socioeconomic structure of the host country;

(ii) sources of information at local level, including social security, health insurance, fiscal registers and entry-exit registrations;

(iii) the use of false, counterfeit or forged documents;

(iv) irregular immigration routes;

(v) refusals;

(c) information on cooperation with transport companies.

4. Local Schengen cooperation meetings to deal specifically with operational issues in relation to the application of the common visa policy shall be organised regularly among Member States and the Commission. These meetings shall be convened within the jurisdiction by the Commission, unless otherwise agreed at the request of the Commission.

Single-topic meetings may be organised and sub-groups set up to study specific issues within local Schengen cooperation.

5. Representatives of the consulates of Member States not applying the Union *acquis* in relation to visas, or of third countries, may on an ad hoc basis be invited to participate in meetings for the exchange of information on issues relating to visas.

6. Summary reports of local Schengen cooperation meetings shall be drawn up systematically and circulated locally. The Commission may delegate the drawing up of the reports to a Member State. The consulates of each Member State shall forward the reports to their central authorities.

7. An annual report shall be drawn up within each jurisdiction by 31 December[1] each year. On the basis of these reports, the Commission shall draw up an annual report on the state of affairs of local Schengen cooperation to be submitted to the European Parliament and the Council.

[1] **PL, PT**: in order to have a good report, it should be drawn up by 1 March and not the end of December. **COM**: date unimportant as long as it is annual.

TITLE VI

FINAL PROVISIONS

Article 47

Arrangements in relation to the Olympic Games and Paralympic Games

Member States hosting the Olympic Games and Paralympic Games shall apply the specific procedures and conditions facilitating the issuing of visas set out in Annex VII.

Article 48

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. Powers to adopt delegated acts referred to in Article 3(2) and (9)[1], shall be conferred on the Commission for an indeterminate period of time.

[1] **NL**, **BE,** supported by **FR,** disagreed with the "delegated acts" procedure in relation to the list of the third countries whose nationals are subject to the Airport Transit Visa requirement. **BE, PL, DE, FR, SE, CH, PT, CZ, IT:** scrutiny reservation on Articles 48 to 50. **PT** and **IT**: scrutiny reservation on Article 51.
CLS recalled that the legislator may (but is not obliged to) delegate to the Commission some of powers (Article 290 or 291 TFEU), which in principle belong to it, and that some elements of the legislation on visas could not be delegated. These were in particular, in accordance with, case-law, so called "essential elements", for which fundamental political choices were necessary. Moreover, CLS stressed that the examination procedure as laid down in Article 5(2) of Regulation 182/2011, coupled with a "no opinion clause" in the basic act (as provided in Article 5(4)(b) of that Regulation), was a guarantee of Member States' supervision of the Commission's exercise of implementing powers conferred on it. As regards the urgency procedure as set out in Article 49, CLS was of the opinion that it was an exceptional solution, as it excluded the possibility of Member States examining the delegated acts in advance. **COM** stated that changes to the common list referred to in Article 3 had to be considered as emergency measures and be decided under an urgency procedure as laid down in Article 49.

3. The delegation of power referred to in Article 3(2) and (9) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the Europen Union or at a later date specified therein. It shall not affect the validity of any delegated act already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 3(2) and (9) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 49

Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 48(5). In such cases, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or the Council.

Article 50

Instructions on the practical application of this Regulation

The Commission shall by means of implementing acts adopt the operational instructions on the practical application of the provisions of this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 51(2).

Article 51

Committee procedure

1. The Commission shall be assisted by a committee (the Visa Committee). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 52

Notification

1. Member States shall notify the Commission of:

(a) representation arrangements referred to in Article 39;

(b) third countries whose nationals are required by individual Member States to hold an airport transit visa when passing through the international transit areas of airports situated on their territory, as referred to in Article 3;

(c) the national form for proof of sponsorship and/or private accommodation referred to in Article 13(7), if applicable;

(d) the list of third countries for which prior consultation referred to in Article 19(1) is required;

(e) the list of third countries for which information referred to in Article 28(1) is required;

(f) the additional national entries in the 'comments' section of the visa sticker, as referred to in Article 24(3);

(g) authorities competent for extending visas, as referred to in Article 30(5);

(h) the choice of consular organisation and cooperation as referred to in Article 38;

(i) statistics compiled in accordance with Article 44 and Annex VIII.

2. The Commission shall make the information notified pursuant to paragraph 1 available to the Member States and the public via the constantly updated Schengen visa website, referred to in Article 45(4).

Article 53

Repeals

Regulation (EC) No 810/2009 is repealed and replaced by this Regulation from 6 months after the day of entry into force.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex XIII.

Article 54

Monitoring and evaluation

1. Three years after the date set in Article 55(2), the Commission shall produce an evaluation of the application of this Regulation. This overall evaluation shall include an examination of the results achieved against objectives and of the implementation of the provisions of this Regulation, without prejudice to the reports referred to in paragraph 3.

2. The Commission shall transmit the evaluation referred to in paragraph 1 to the European Parliament and the Council. On the basis of the evaluation, the Commission shall submit, if necessary, appropriate proposals with a view to amending this Regulation.

3. The Commission shall present, three years after the VIS is brought into operation and every four years thereafter, a report to the European Parliament and to the Council on the implementation of Articles 12, 15, 38, 40 to 42 of this Regulation, including the implementation of the collection and use of biometric identifiers, the suitability of the ICAO standard chosen, compliance with data protection rules, experience with external service providers with specific reference to the collection of biometric data, the implementation of the 59-month rule for the copying of fingerprints and the organisation of the procedures relating to applications. The report shall also include, on the basis of Article 17(12), (13) and (14) and of Article 50(4) of Regulation (EC) No 767/2008, the cases in which fingerprints could factually not be provided or were not required to be provided for legal reasons, compared with the number of cases in which fingerprints were taken. The report shall include information on cases in which a person who could factually not provide fingerprints was refused a visa. The report shall be accompanied, where necessary, by appropriate proposals to amend this Regulation.

4. The first of the reports referred to in paragraph 3 shall also address the issue of the sufficient reliability for identification and verification purposes of fingerprints of children under the age of 12 and, in particular, how fingerprints evolve with age, on the basis of the results of a study carried out under the responsibility of the Commission.

Article 55

Entry into force

1. This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

2. It shall apply from [6 months after the day of entry into force].[1]

3. Article 51 shall apply from [3 months after the day of entry into force].[2]

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at […],

For the European Parliament	*For the Council*
The President	*The President*

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[1] **DE, NO, NL**: scrutiny reservation; implementation period should be longer because both the VIS and the national systems had to be adapted.

[2] **CLS** asked why a timeframe of 3 months was necessary since the Visa Committee had already been set up. **COM** replied that the Visa Committee would be given with a new mandate, new competences and should be able to work on that new basis 3 months before the application of the Regulation. Since it was of the opinion that the mandate of the Visa Committee was based on several articles and not only on Article 55, **CLS** stressed that this provision had to be redrafted.