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OUTCOME OF PROCEEDINGS

From:	Visa Working Party/Mixed Committee EU-Iceland/Liechtenstein/Norway/Switzerland)
On:	4 and 5 March 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 4-5 March 2015, the Working Party examined the suggestions made by the Presidency concerning the definition of and the facilitations granted to the "VIS registered applicants" and the "VIS registered regular travellers" as well as the deadlines concerning the submission of applications, the prior consultation and the decision on the application, as set out in 6533/15¹.
2. The text of the articles concerned is included in the Annex. Comments in relation to the provisions of the articles are set out in the footnotes to the Annex.

¹ **SE**, supported by **AT, CZ, ES, NO, SK FR** and **PT**, gave their views on 6093/15, in which the Presidency had produced a "state of play" after the first examination of the articles in the draft regulation. They took the view that there were some more outstanding issues in addition to those identified in 6093/15. **AT** entered a scrutiny reservation on the whole text of 6533/15. **COM** wanted to wait for the position of the European Parliament before adopting a final stance on the Presidency's suggestions.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the Union Code on Visas (Visa Code)

(recast)

Definitions and facilitations

TITLE I

GENERAL PROVISIONS

Article 2

Definitions

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

8. "VIS registered applicant" means a visa applicant whose data are registered in the Visa Information System;¹

¹ **PL** questioned the added value of such a definition. **COM**: it is helpful to define this. Further reflection needed. **SE** disagreed with the definition since it includes applicants who have been refused a visa and should not be covered.

9. "VIS registered regular traveller" means a visa applicant who is registered¹ in the Visa Information System and who has obtained three² visas within the 12 months prior to the application;³

CHAPTER II

APPLICATION

Article 9

General rules for lodging an application

¹ **NO** suggested aligning the wording in (9) with that in (8) : "...whose data are registered...". **COM** said it could agree with that suggestion and referred to the VIS Regulation for the definition of data.

² **BE, FR** and **SE** took the view that the suggestion that the applicant be required to have been issued three visas in 12 months was not a solution to the concerns raised by Member States. **DE** said that this kind of visa applicants were not the category of applicants who should be covered. Furthermore, **BE** suggested adding "uniform" before visas in order to exclude "visas with limited territorial validity" (LTVs) and "Airport transit visas" (ATVs). **COM** agreed to exclude ATVs but said that excluding LTVs needed further reflection. **CZ**, supported by **SK**, suggested adding that the applicant needed to have used the visas "lawfully", with which **COM** disagreed since it was for the consulate to check the lawful use of a previous visa and should not be left to the applicant to assess. **CZ** asked about the time validity of the visas: were "Multiple entry visas" (MEVs) also covered ? **ES** supported **BE, DE, SE** and **CZ**. **NO** supported **BE, SE** and **DE**. **FR** rejected the idea of any automaticity, arguing that each application had to be considered individually by the consulate, which could best assess whether or not to issue a visa, and for which validity period. **FR** also stressed that the external service providers did not have access to the VIS so it would not be possible for them to check if the applicant was registered in the VIS. **COM** disagreed with the idea of an automatic issuance of the visa and recalled that the consulate would always have the possibility to assess whether all conditions had been met before issuing the visa. It was only if all those conditions were met that a "Multiple Entry Visa" (MEV) would need to be issued (see Article 21(3)). **COM** stressed that the legal definition of a "bona fide" applicant should be based on objective criteria with a view to a better harmonisation of visa policy. **COM** stated that requiring that the visa applicant be issued "three" visas could narrow down the scope of the provision. **SE** asked how the data concerning previous applications for which the visa had been refused could be traced back when a new application was submitted. **COM** replied that such information could be found in the VIS. **COM** also stated that the requirement to be issued a visa was only assumed in (9), not in (8). **PT** supported **BE** and **SE**, and entered a scrutiny reservation.

³ **PL** entered a scrutiny reservation.

2. VIS registered applicants and VIS registered regular travellers 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.¹

Article 13

Supporting documents

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

- (a) documents indicating the purpose of the journey;
- (b) documents in relation to accommodation, or proof of sufficient means to cover his accommodation;
- (c) documents indicating that the applicant possesses sufficient means of subsistence both for the duration of the intended stay and for the return to his country of origin or residence, or for the transit to a third country into which he is certain to be admitted, or that he is in a position to acquire such means lawfully, in accordance with Article 5(1)(c) and (3) of Regulation (EC) No 562/2006 of the European Parliament and of the Council² ;
- (d) information enabling an assessment of the applicant's intention to leave the territory of the Member States before the expiry of the visa applied for.

¹ **DE, PL, PT** agreed with the new drafting. **BE** asked whether those two categories needed to be included in the provision since "VIS registered applicants" were included in the notion of "VIS registered regular travellers". **COM** agreed but warned that this change would then need to be made throughout the text. **BE** then questioned the need to have this paragraph at all as it considered that paragraph 1 was sufficient.

² Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).

2. Points (b), (c) and (d)¹ of paragraph 1 do not apply to applicants who are VIS registered regular travellers and who have lawfully used the three previously obtained visas. However, this paragraph shall not apply where the presumption referred to in Article 18(2) does not apply².

6. The consulate shall start processing the visa application on the basis of (...) copies of the supporting documents. Applicants who are not yet registered in the VIS shall provide the original. The consulate may ask for original documents from applicants who are VIS registered applicants or VIS registered regular travellers, (...) where there is doubt about the authenticity of a specific document or where the requirement to submit original documents stems from the harmonised list of supporting documents referred to in Article 46(1)(a).³

¹ **BE, FR, CH, SE** said point d) should not be included as consulates should be allowed to assess the applicant's intention to leave the territory of the Member States. **COM**: this should not apply to "VIS registered regular traveller" since that intention could be presumed from the use of the previous visas.

² **FR**: unclear, needs to be redrafted; Article 18(3) should be referred to instead. **DE, PL**: concerns in relation to the presumption. **COM** found it was not good practice in terms of drafting legislation to refer to a later provision and, moreover, stated that it would not be applicable in practice.

³ **DE, BE, PL, PT** agreed with the new drafting. **COM**: last part of the sentence is problematic since the harmonised lists established at Local Schengen Cooperation (LSC) level only refer to the kind of documents and not whether they have to be submitted in the original or as copies. **COM** took the view that it could be decided within the LSC that original documents would be required where many forged documents were submitted.

CHAPTER III

EXAMINATION OF AND DECISION ON AN APPLICATION

Article 18

Verification of entry conditions and risk assessment

2. In the examination of an application for a uniform visa lodged by a VIS registered regular traveller who has lawfully used the three previously obtained visas, it shall be presumed that the applicant fulfils the entry conditions regarding the risk of irregular immigration¹, (...) ² and the possession of sufficient means of subsistence³.

3. The presumption referred to in paragraph 2 shall not apply where the consulate has reasonable doubts⁴ about the fulfilment of these entry conditions based on any other relevant⁵ information (...) ⁶.

¹ **BE, FR and CH:** if (d) is deleted in 13(2), the reference to "risk of irregular immigration" should be deleted here.

² **BE, FR, PL and DE:** supported the deletion of the reference to "a risk to the security of the Member States". **BE:** would not oppose including that reference again, if the Commission wanted to have it back. **COM** stated that it did not object to the deletion of that reference.

³ **FR** agreed with the objective pursued in paragraph 2 but suggested that this provision be redrafted as the difference between paragraphs 2 and 3 was currently not clear. **HU** entered a scrutiny reservation.

⁴ **FR:** "reasonable doubts" should apply to any element, and not be limited as in this paragraph. **FR** felt, contrary to the Commission's assertion, that there would be automaticity in the issuance of the visa.

⁵ **BE, FR, DE, PL and CH** welcomed the addition since broadening the scope of information meant providing consulates with greater freedom for action, as well as taking into account the local circumstances. Although **COM** did not oppose this addition, it still considered that the reference to "information stored in the VIS" should be maintained.

⁶ **COM** took the view that the rule expressed in paragraph 3 amounts to a "lex specialis" whereas paragraph 10 concerns the general rule. Therefore, **COM** suggested adding "as referred to in paragraph 10" at the end of this paragraph. The **Council Legal Service (CLS)** agreed with **COM**'s interpretation and stated that paragraph 10 should contain the general rule that could be relied upon during the examination of the application. **CLS** added that paragraph 2 contained a presumption that shifted the burden of proof on to the consulate, so the presumption would work as long as the consulate had not raised any grounds for revoking it. It must, of course, first be checked whether the presumption in paragraph 2 applied.

10. During the examination of an application, consulates may in justified cases as well as when the presumption referred to in paragraph 2 does not apply¹, carry out an interview and request additional documents.

CHAPTER IV

ISSUING OF THE VISA

Article 21

3. VIS registered regular travellers who have lawfully used the three previously obtained visas shall be issued a multiple entry visa valid for at least three years.

4. Applicants referred to in paragraph 3 who have lawfully used the multiple entry visa valid for at least three years shall be issued a multiple entry visa valid for five years provided that the application is lodged no later than one year from the expiry date of the multiple entry visa valid for at least three years.²

¹ **BE** did not see any added value from this addition. Subsequent to its suggestion in paragraph 3, **COM** suggested leaving this paragraph unchanged.

² **SE**, supported by **FR, CH BE** and **ES**, welcomed the new drafting suggestion but pleaded for more flexibility, adding suggestions aimed at allowing consulates to decide on the length of the visa to be issued. **FR** wanted the provisions of the current Visa Code to be maintained, on the basis of which Member States could decide who could be issued a visa and for which validity period. **NO**: what is the cut-off date of the period to be examined in relation to the previous issued visas ? **COM** noticed that delegations were making divergent requests in terms of flexibility. Furthermore, **COM** said that the current system based on the "may" clause, as referred to in Article 24(1) of the current Visa Code, was not functioning well since it was leaving too much discretionary power to consulates; it had therefore been amended in the proposal along the lines of the specific rules included in the existing Visa Facilitation Agreements to that end, which were being applied satisfactorily.

Deadlines

CHAPTER II

APPLICATION

Article 8

Practical modalities for lodging an application

1. Applications shall be lodged no more than six months before and, as a rule, no later than 15 calendar days before the start of the intended visit¹.

CHAPTER III

EXAMINATION OF AND DECISION ON AN APPLICATION

Article 19

Prior consultation of central authorities of other Member States²

2. The central authorities consulted shall reply definitively as soon as possible but no later than within six 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

¹ **NO** and **CZ** agreed with the changes suggested. **DE**: reference to "as a rule, no later than 15 calendar days" could be deleted since it would be preferable to leave that period open. **BE** disagreed with **DE**: even if visas were issued very fast in exceptional cases, Member States should not tie themselves with deadlines that were impossible to meet. The **Chair** stressed that it was important to refer to a standard deadline, with the possibility to issue the visa more quickly if need be. **PT, PL, HU, EL IT** agreed with **BE** and the Chair. **COM** agreed with the changes. In reply to a question raised by **LT**, **COM** said that aligning the period for lodging the application with the period for processing the application (10 days - see Article 20(1)) could be acceptable.

² **CZ** agreed on the changes as suggested.

³ **DE**, supported by **PT, CH, LT, EL, IT** wanted to stick to the current rule (7 days). **PL, LT, HU** entered a scrutiny reservation. **COM** disagreed and explained that 5 days was fully feasible if consulted Member States replied actively to the prior consultation requests and did not let the 7-day period elapse as **COM** thought was currently happening in too many Member States.

3. Member States shall notify the Commission of the introduction or withdrawal of the requirement of prior consultation, as a rule, at the latest 15 calendar days before it becomes applicable. This information shall also be given within local Schengen cooperation in the jurisdiction concerned.¹

Article 20

Decision on the application²

1. Applications shall be decided on within 10 calendar days³ 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 40 calendar days in individual cases, notably when further scrutiny of the application is needed⁴.

¹ **DE** could agree to the wording suggested but would prefer to maintain the current procedure set out in Article 22(3) of the current Visa Code.

² **PT, HU** and **DK** entered scrutiny reservation.

³ **BE, CH, DE** and **SK** stated that this period would be too short in peak seasons and requested keeping the current "15 days deadline" in accordance with Article 23(1) of the current Visa Code.

⁴ **FR, PL, NL, FI** and **HU** favoured the time sequence currently provided for in Article 23 of the Visa Code. **CH** supported 40 days. **PL** suggested adding "as soon as possible" since taking a decision more quickly was possible in some locations but not in others. **FR** stressed on the need for the "60 days period" in specific cases (see Article 23(3) of the current Visa Code) as this deadline corresponded to their internal administrative rules. **CZ** found "10 days" acceptable but wanted to keep the maximum deadline of 60 days. **BE, ES** and **IT** would be ready to agree to 40 days if the Commission could go along with a standard "15 days period" in paragraph 1. **SE** would be ready to agree to 10 days if the Commission agreed to a maximum deadline of 60 days. **DK** wanted the "60 days" to be maintained. **DE** and **SK** entered a scrutiny reservation. **COM**, while supporting the suggestion made by **PL**, stressed that the vast majority of visas were issued within 10 days, or even less in some locations. **COM** felt that a timescale with two levels (10 days - 30,40 days) could be acceptable. Lastly, **COM**, supported by the **Chair**, requested that delegations provide the Commission with examples of cases where Member States needed 60 days to take a decision.