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OUTCOME OF PROCEEDINGS

From:	Visa Working Party/Mixed Committee EU-Iceland/Liechtenstein/Norway/Switzerland)
On:	7 and 8 April 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 on 8 April 2015, the Working Party examined the drafting suggestions made by the Presidency in 7437/15 concerning the definition of and the facilitations granted to the "VIS registered applicants", the "VIS registered regular travellers", the deadlines regarding the submission of applications, the prior consultation and the decision on the application, as well as the visa fee and the Travel Medical Insurance.
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)

(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 and who has already obtained a visa¹;

¹ **FR** wondered why such a reference had been added in this Article since it had already been included in Article 13(6). **BE, DE** and **SE** disagreed with the suggested wording since it would mean that applicants who had not obtained a visa would be required to appear in person when lodging the application in order to have their fingerprints collected although they were already registered in the VIS. **BE, DE, PL** and **PT** entered a scrutiny reservation. The **representative of the Commission** (COM) also disagreed, for the same reasons as raised by delegations, namely that it would deviate from the "59 months rule" referred to in Article 9. Moreover, COM stressed that the applicant could not be penalised because some Member States were not in a position to check the presence of the applicant's data in the VIS in any other way than on the basis of the visa sticker.

9. "VIS registered regular traveller" means a visa applicant **whose data are** registered in the Visa Information System and who has obtained¹ at least three uniform visas or one multiple entry visa valid for at least one year within the 24 months prior to the application²;

¹ **ES** suggested adding "lawfully".

² **FR, DE, BE** and **IT**, while welcoming the overall direction of the changes, nevertheless said that requiring three visas to be issued in 24 months' time did not meet the Member States' concerns, for instance about "single entry visas" and therefore believed that better conditions for defining "Visa registered regular travellers" still needed to be found. **BE**, supported by **AT, SK** and **ES**, suggested adding a reference to Visa with Limited Territorial Validity (LTV) when such a visa was issued in the case referred to in Article 25(3) of the current Visa Code. **PT** entered a scrutiny reservation. **COM** wanted to maintain its proposal while recognising the need to find a compromise. Moreover, COM reminded delegations that the opinion of the EP was still unknown.

CHAPTER II

APPLICATION

Article 9

General rules for lodging an application

2. 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.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 The **Chair** reported that the original text of the proposal had been reinstated. **AT** suggested referring to "all possible fingerprints" to cover the eventuality that the consulate might have to take missing fingerprints. **COM** replied that the issue could be best dealt with in Articles 8 and 13.

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) of paragraph 1 **shall** not apply to applicants who are VIS registered regular travellers and who have lawfully used the previously obtained visas as referred to in Article 2(9)¹, unless the consulate has reasonable doubts that the applicant does not fulfill the conditions specified in points (b), (c)² and (d)³ of paragraph 1.

6. The consulate shall start processing the visa application on the basis of (...) copies of the supporting documents. Applicants **whose data** are not yet registered in the VIS or applicants whose data are registered in the VIS but who have not obtained a visa shall provide the original⁴. The consulate may ask for original documents from applicants who are VIS registered applicants (...), (...) where there is doubt about the authenticity of a specific document **or where the requirement to submit original documents stems from the harmonised list of supporting documents referred to in Article 46(1)(a).**⁵

¹ NL, supported by FR and SE, was of the opinion that a reference to Article 2(9) was not necessary. AT and PT, while agreeing with NL, thought that keeping it in could provide more clarity. PT entered a scrutiny reservation.

COM disagreed with the changes since this provision is related to the lodging of the application and not the verification of entry conditions as in Article 18.

² CZ wanted the reference to points (c) and (d) deleted.

³ BE, supported by SE and PT, disagreed since consulates should always be in a position to check the applicant's intention to leave the territory of the Member States.

⁴ SE, NL, BE, ES, FR, PL, DE and IT supported the drafting changes. IT wondered how applicants would know that their data have been entered into the VIS. COM disagreed with the changes for the reason that the terms "who have not obtained a visa" were unclear.

⁵ PT entered a scrutiny reservation. COM considered that a reference to the harmonisation at local level was not the correct way to go. In response to a request by FR, COM replied that several forms of invitation defined in the national legislation were not covered by the Schengen cooperation at local level.

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 previously obtained visas as referred to in Article 2(9)¹, it shall be presumed that the applicant fulfils the entry conditions regarding the risk of irregular immigration², (...) and the possession of sufficient means of subsistence.
3. The presumption referred to in paragraph 2 shall not apply where the consulate has reasonable doubts about the fulfilment of these entry conditions based on information stored in the VIS, such as decisions annulling a previous visa, or in the passport, such as entry and exit stamps or **any other relevant** information. In such cases, the consulates may carry out an interview and request additional documents **as referred to in paragraph 10**.³
10. During the examination of an application, consulates may in justified cases carry out an interview and request additional documents.

¹ **PT** entered a scrutiny reservation in relation to the reference to Article 2(9).

² **BE**, supported by **PT**, **SE** and **AT**, was of the opinion that the terms "risk of irregular immigration" could be deleted if a reference to point (d) in Article 13(2) was to be deleted. **FR**, **SE**, **DE**, **AT** and **PL** agreed with the drafting changes. **COM** said it could agree with the changes subject to its remarks raised in relation to Article 2(9).

³ **COM**: see previous footnote.

CHAPTER IV

ISSUING OF THE VISA

Article 21

Issuing of a uniform visa¹

3. VIS registered regular travellers who have lawfully used the previously obtained visas as referred to in Article 2(9), shall be issued, as a rule², 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, as a rule, 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.

¹ **PT, PL** and **IT** entered a scrutiny reservation.

² **FR**, supported by **SE, PL** and **BE**, entered a scrutiny reservation while stressing that it is the "automaticity" in issuing the visa that is questionable, not the period of its validity. **SE** and **DK** stressed the need for flexibility. **ES** was of the opinion that "as a rule" was not sufficiently clear and suggested "except for exceptional and justified cases" **COM** said that it could not agree with an overly vague, unclear formulation and recalled that this was precisely what the proposal was aiming to avoid.

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**¹, no later than 15 calendar days before the start of the intended visit.

CHAPTER III

EXAMINATION OF AND DECISION ON AN APPLICATION

Article 19

Prior consultation of central authorities of other Member States

2. The central authorities consulted shall reply definitively as soon as possible² but no later than within seven calendar days after being consulted. (...) ³
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 **ES**: same comment as in relation to Art.21(3): "as a rule" is not sufficiently clear. Therefore, "except for exceptional and justified cases" would be better.

² **BE**, supported by **CZ**, **AT**, **PT** and **NO** had doubts concerning the added value of "as soon as possible". **DK** entered a scrutiny reservation. **CZ**, supported by **IT**, suggested inserting a "silent procedure" in the prior consultation process. **COM** indicated that "definitively" meant yes or no and stated that the CZ suggestion could be regarded as a compromise.

³ **BE**, supported by **CZ**, **AT**, **PT** and **NO**, were willing to re-establish the deleted sentence "The absence of a reply within this deadline shall mean that they have no grounds for objecting to the issuing of the visa".

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 40 calendar days in individual cases, notably when further scrutiny of the application is needed.¹

¹ **HR, ES** and **IT** could support this for the sake of compromise. **PT** entered a scrutiny reservation while indicating that it preferred the deadlines set out in Article 23 of the current Visa Code. **BE, DK, SE, FR** and **CZ** pleaded for a maximum period of up to 60 days in the interest of the applicant. **NL** suggested having at least 45 calendar days. **PL** entered a scrutiny reservation. **COM** said it was not ready to compromise now and invited Member States, in order to be able to meet the deadlines, to allocate their resources to assessing first time applicants rather than regular travellers.

Visa fee

Article 14

Visa fee¹

1. Applicants shall pay a visa fee of EUR 60.²
2. ³Within 6 months after the date set out in Article 55(2) and not less than every 3 years thereafter, the Commission shall by means of implementing acts revise the amount of the visa fee in order to reflect the administrative costs⁴. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 51(2).

¹ **SK** wanted a clearer wording to be found for the title. **PT, HU, NL** and **LT** entered a scrutiny reservation on paragraphs (1) and (2).

² **AT, DK, SE, FR** and **IT** wanted a higher level of fee to be introduced since the actual costs of the visa process are much higher. **AT**, supported by **SK, BE, SE** and **FR**, suggested differentiating the fee by the type of visa issued (the fee for a Multiple-entry visa (MEV) should be higher than for a single-entry visa). On the basis of reciprocity, **SK**, supported by **BG**, suggested linking the level of the fee with that of the third country concerned. **PL** stated that the level of the visa fee was a political issue as it was not possible to calculate how much it cost.

³ **DE, PL, FR, ES** entered a scrutiny reservation.

⁴ **AT**: "revise" is problematic. **DK**: revision should be carried out on a more regular basis. **BE** agreed on revising the fee by an implementing act only if it is to increase it. **DE, FR, ES** and **HU** warned that two levels of visa fee could coexist: EUR 60 currently as set out in paragraph 1 and another one on the basis of paragraph 2. **IT** stated that an implementing act offered more flexibility.

COM reiterated that it was unfortunate that only one Member State had informed the Commission on the actual costs for issuing a visa at the time of the proposal. **COM** invited delegations to forward any information they might have on that matter. As regards the differentiation, **COM** was of the opinion that the administrative costs remained the same, no matter whether it was an MEV or a single-entry visa. **COM** agreed with **FR** and **DE** on the risk of having two levels of the visa fee. Furthermore, **COM** believed the legal aspect of the suggestion made in paragraph 2 had to be further scrutinised.

3. The following categories shall pay no visa fee:¹

(a) minors under the age of **twelve** years² ;

(b) school pupils, students, postgraduate students and accompanying teachers who undertake stays for the purpose of study or educational training;

(c) researchers from third countries, as defined in Council Directive 2005/71/EC³, travelling for the purpose of carrying out scientific research or participating in a scientific seminar or conference;

(d) (...);

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

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

(g) family members of Union citizens as referred to in Article 3 of Directive 2004/38/EC in accordance with Article 5(2) of that Directive.]⁴

¹ **AT**, supported by **BE** and **SE**, reported that the revenue from the visa fee was too low because there were too many exemptions provided for in the visa facilitations agreements and stressed that paragraphs 1, 2 and 3 were linked. **PT** entered a scrutiny reservation.

² **SE**: "six years" to be maintained. **FR**, **HR** and **IT** were in favour of "twelve years". **COM** wanted the provisions of the proposal to be kept: minors under the age of 18 years and holder of diplomatic and service passports should pay no visa fee.

³ Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purpose of scientific research (OJ L 289, 3.11.2005, p. 15).

⁴ The facilitations included in (f) and (g) should be discussed together with the definition of close relatives, as well as the facilitations granted to close relatives and family members of EU citizens.

3a. The visa fee may be waived for holders of diplomatic and service passports.¹

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

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

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

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

¹ **DK, FR, BE, IT, NL, DE, PL** and **HR** supported the suggestion. **PT** entered a scrutiny reservation.

Travel Medical Insurance (TMI)

Article 14a

Travel medical insurance¹

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

2. Applicants for a uniform visa for more than one entry (multiple entries) shall prove that they are in possession of adequate and valid travel medical insurance covering the period of their first intended visit.²

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

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

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

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

When another person takes out insurance in the name of the applicant, the conditions set out in paragraph 3 shall apply.

¹ **DK**, supported by **FR, SE, NL, BE, DE, MT, ES, HR, PL, NO, LT, PT, CZ, SK** and **FI**, welcomed the reintroduction of the TMI in the proposal. **FR** suggested adding that the unpaid hospital bills would constitute a reason for refusing the visa. **COM** questioned the added value of such an addition. Moreover, **COM** wondered where those bills came from. **FR** requested that the text be improved by referring to accredited medical insurance. **ES, HR, PL, FI** and **SK** entered a scrutiny reservation.

² **SE**, supported by **DE**: inconsistency with paragraph 7 to be settled. **AT** was of the opinion that this paragraph was sufficient and that paragraph 7(a) could be deleted.

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

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

7¹. The following categories shall be exempt from the requirement² to hold travel medical insurance:

(a) holders of diplomatic and service passports;³

(b) VIS registered regular travellers⁴;

(c) holders of a multiple-entry visa before the expiry of the visa valid for a period of at least 3 years. ⁵

¹ **LT** and **PT** entered a scrutiny reservation. **EL** expressed doubts about all categories.

² **ES**, supported by **NL** suggested: "...shall be exempt from showing they hold a TMI:".

³ **DK, BE, FR, MT** and **PT** disagreed that such a category be exempted, **CZ** disagreed that holders of service passports be exempted.

⁴ **FR**: reservation since frequent travellers are the more likely to need a TMI. Moreover, **FR** asked how border guards would know not to ask such travellers whether they have a TMI. **COM** replied that border guards cannot check the TMI at the borders. **DK, NL, BE, FR, MT, PT, AT** and **CZ** disagreed that such a category be exempted. **NL** and **CZ**: such travellers should not show they are covered by a TMI but should have one.

⁵ **DK, NL, BE, FR, MT, PT, AT** disagreed that such a category be exempted. **CZ**: category covered is unclear.