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From:	Presidency
To:	Visa Working Party
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Subject:	Draft Regulation of the European Parliament and of the Council on the Union Code on Visas (Visa Code) (recast)

With a view to the meeting of the Visa Working Party on 26 and 27 September 2016, the Presidency would like to invite delegations to take note of the outcome of the last trilogue meeting, which took place on 6 September 2016.

Delegations will find below a general outcome of the trilogue and some more details on the issues which were discussed, under which the Presidency has made some compromise suggestions with a view to agreeing with the EP.

A) Outcome of the trilogue

During the trilogue, the following issues were discussed :

- 1) General discussion on the recast technique;
- 2) the humanitarian visa (several amendments from the EP including in particular articles 22(5a) and 55(3a) as well as articles 6(2a), 17(4) and 22(1)(a));
- 3) the link between the general facilitations and cooperation on readmission (Article 13(2a until 2d));
- 4) the use of delegated and implementing acts (ATVs, annexes, instructions on the practical application);
- 5) Mandatory representation (articles 5(2), 5(2a) and 39);
- 6) Close relatives (definition in Article 2(7) and suggested facilitations in articles 8(3), 13(3), 14(3)(f), 20(3) - amendments from the EP in articles 18(3a) and 29(2a)).

No definitive results were achieved on the above questions at this stage, but participants had a very useful exchange of views in a good atmosphere and referred to a number of ideas which may facilitate further proceedings at technical and political level.

B) Details of the discussion

1. General issue of the recast technique ("white and grey parts")

The Presidency and COM stressed the importance of sticking to the recast rules (possibility for the co-legislators to amend only the parts highlighted in grey) as they had agreed to at Coreper level. The Rapporteur favoured a pragmatic approach and advocated widening the scope of the recast exercise.

2. Humanitarian Visa

The Rapporteur made it clear that the introduction in the Visa Code of a humanitarian visa was a priority for the EP. The aim of this new kind of visa would be the creation of legal avenues to come to the EU for all persons on professional grounds, on humanitarian grounds, for reasons of national interest or because of international obligations. The reason why the EP insists on including the provisions related to the humanitarian visa in the Visa code is that it would take too long to wait for a specific proposal from the Commission on this matter. However, due to the practical difficulties for implementing such a visa, the EP has proposed a two year delay before the application of the provisions concerning this new type of visa.

Both the Presidency and COM requested some clarification from the EP on the exact nature of the humanitarian visa and asked how it would operate in practice.

Furthermore, COM said that the Visa Code was not the right instrument for allowing international protection since it regulates only the short-stay for people who have the will to return. Therefore, he recommended assessing the possibility of introducing such a protection in the framework of the discussions on the proposal for a Regulation of the EP and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council¹, which the Commission tabled on 13 July 2016. Furthermore, he was of the opinion that creating a humanitarian visa would imply that consulates would have to deal with pre-asylum procedures.

The Presidency agreed with COM that the Visa Code was not aimed at dealing with migration and, while warning about the practical consequences for consulates of such a pre-asylum procedure, concurred with COM that the issue should be examined in the framework of the discussions concerning the above cited draft Regulation.

¹ COM (2016) 468 final. See doc. 11313/16.

In order to come to an agreement with the EP, the Presidency would like to ask delegations whether they could agree to examine the issue of the humanitarian visa in the context of the Resettlement Regulation and also the possible consequences for Article 22 of the recast (possibility to issue a visa with limited territorial validity for humanitarian reasons).

3. Link between facilitations and cooperation on readmission

The Rapporteur, supported by COM, while recognising the usefulness of taking into account the level of collaboration of third countries in the field of readmission, could however not agree on the existence of different national lists. Moreover, the Rapporteur insisted on having a positive list of countries that cooperate on readmission adopted at EU level by delegated act.

In order to come to an agreement with the EP, the Presidency suggests:

- having one list of cooperative third countries at EU level only;*
- having that list adopted and amended (adding or removing a third-country) by delegated act.*

4. Delegated and implementing acts

The EP as a starting point insists on having the delegated act procedure in Articles 3(2), 3(9), 22(5a), 47a and 50.

However, the Rapporteur announced his readiness to agree on implementing acts in Article 24 (Filling in the visa sticker), Article 26 (Affixing a visa sticker) and Article 34 (Visas issued to seafarers at the external border). Moreover, the Rapporteur suggested having the Handbook for the implementation of the Visa Code adopted by means of a recommendation by the Commission, which COM could not agree with.

The Presidency suggests examining again the articles in which the procedures of implementing act and delegated act are provided in order to find a compromise with the EP in that regard.

5. Mandatory Representation

The Presidency explained that the situation was improving since more and more representation arrangements were concluded between Member States and that, given this positive trend, representation should not be made mandatory.

COM, while supporting the Rapporteur's view that visa applicants should not be obliged to travel in order to lodge her/his application when the competent Member State is neither present nor represented, said that a timeline for concluding the necessary arrangements could be granted to Member States.

In order to come to an agreement with the EP, the Presidency suggests a statement by the Council whereby Member States will endeavour to develop the cooperation among themselves and to widen the cooperation with External Service Providers with a view to covering all blank spot territories around the world.

6. Close Relatives

The Presidency found that Directive 2004/38/EC was a better place for creating procedural facilitations for those relatives.

In order to come to an agreement with the EP, the Presidency suggests limiting the scope of relatives to that defined in Directive 2004/38/EC (family members), as provided for in the Council position, and consider giving those family members further facilitations such as facilitations proposed by the EP for the category of the close relatives.

C) Conclusion

Consequently, for the purpose of the discussions at the next meeting of the Working Party on 26/27 September 2016, the Presidency invites delegations to examine the above suggestions with a view to further proceedings with the EP.
