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NOTE

From:	Presidency
To:	Visa Working Party
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Subject:	Draft Regulation of the European Parliament and of the Council establishing a touring visa and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 562/2006 and (EC) No 767/2008

With a view to the meeting of the JHA Counsellors on 26 February 2016, the Presidency has prepared the revised version of the abovementioned draft Regulation, as set out in the Annex, taking into account the outcome of the discussions at the last meeting of the Visa Working Party on 8 and 9 February 2016.

The text of the draft Regulation as amended by the Working Party appears in **bold** (new text or "(...)" when text has been deleted). The text that has not been agreed yet or the new drafting suggested by the Presidency is underlined and shown in ~~striketrough~~ when the text has been deleted. In addition, the recent suggestions introduced following the meeting of the Visa Working Party on 8 and 9 February 2016 are **highlighted**.

At the JHA Counsellors on the 26 February 2016, the Presidency wishes to discuss in particular:

- the choice of draft options to Articles 6 and 7;
- the possible deletion of Article 12.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
establishing a touring visa and amending the Convention implementing the Schengen
Agreement and Regulations (EC) No 562/2006 and (EC) No 767/2008

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Regulation lays down the conditions and procedures for issuing touring visas.
2. It shall apply to third-country nationals who are not citizens of the Union within the meaning of Article 20(1) of the Treaty, and who fall within the following categories:
 - (a) ~~the right of free movement enjoyed by third-country nationals who are family members of citizens of the Union~~
artists, live performers, and culture professionals and members of their support staff, as well as their close family members;
 - (b) ~~the equivalent rights enjoyed by third-country nationals and their family members, who, under agreements between the Union and its Member States and these third countries, enjoy rights of free movement equivalent to those of Union citizens and members of their families.~~
high performance athletes and members of their support staff, as well as their close family members;

(c) individuals who are nationals of countries listed in Annex II of Council Regulation (EC) No 539/2001.

3. This Regulation does not affect the provisions of Union or national law applicable to third-country nationals with relation to:

(a) admission for stays for longer than **90 days** on the territory of one Member State and subsequent mobility to the territory of other Member States;

(b) access to the labour market and the exercise of an economic activity, in particular as regards individual Member States' requirements for work permits and rules on where and when such permits must be obtained.

Article 2

Application of Regulation (EC) No 767/2008 and Regulation (EC) No xxx/201x [Visa Code (recast)]

1. Regulation (EC) No 767/2008 shall apply to touring visas.

2. Regulation (EU) No xxx/201x [Visa Code (recast)] shall apply to touring visas, as provided for in Articles 4 to 10.

Article 3

Definitions

For the purposes of this Regulation:

(1) the definitions provided for in Article 2(1), and (11) to (16) of Regulation (EU) No xxx/201x [Visa Code (recast)] shall apply.

(2) ‘touring visa’ means an authorisation issued by a Member State with a view to an intended stay in the territory of two or more Member States for a duration of more than 90 days in any 180-day period, provided that the applicant does not ~~intend to~~ stay for more than 90 days in any 180-day period in the territory of the same Member State;

(3) ‘close family members’ mean the spouse, the registered partner, dependent children under the age of 18 and parents of a dependent child under the age of 18.

(4) ‘support staff’ means paid ~~or unpaid~~ personnel providing any direct assistance to artists, live performers, culture professionals or high performance athletes which are necessary for the proper execution of the artists’, live performers’, culture professionals’ or high performance athletes’ work.

Chapter II – Conditions and procedures for issuing touring visas

Article 4

Authorities taking part in the procedures relating to applications

1. Article 4(1), (3), (4) and (5), Article 6(1) and Article 7(2) and (3) of Regulation (EU)

No xxx/201x [Visa Code (recast)] shall apply.

2. Applications shall not be lodged, examined and decided on at the external borders of the Member States.

3. The Member State competent for examining and deciding on an application for a touring visa shall be:

(a) ~~the Member State whose external border the applicant intends to cross in order to enter the territory of the Member States~~ territory constitutes the main destination of the visit(s) in terms of the length of stay counted in days, or

(b) if no main destination can be determined, the Member State whose territory constitutes the first destination of the visits.

~~4. Applications by nationals of third countries listed in Annex II to Regulation (EC) No 539/2001 legally present in the territory of a Member State may be lodged within the territory of that Member State provided that the consulate of the competent Member State has at least 20 calendar days to decide on the application.~~

~~5. Applications by third country nationals, irrespective of their nationality, who hold a valid residence permit or valid long stay visa issued by a Member State may be lodged within the territory of that Member State at least 20 calendar days before the expiry of the residence permit or long stay visa.~~

~~6. In cases referred to in paragraphs 4 and 5 the competent Member State for examining and deciding on an application for a touring visa shall be the Member State the applicant intends to enter first making use of the touring visa.~~

Article 5

Application

1. Article 8(1), (2), ~~(5)~~, (6) points (a) and (c) and (7), Article 9(1) and (3), Article 10(1), and (3) to (7), Article 11, points (b) and (c), Article 12, Article 13(1), points (a) to (d), ~~Article 13(5), (6) and (7)~~, Articles 14 (2), (3), points (a) to (c) and (e), (4) to (6), and Article 15 of Regulation (EU) No xxx/201x [Visa Code (recast)] shall apply.

2. The application form for the touring visa shall be as set out in Annex I.

2a. Applicants shall pay a visa fee of EUR 120. A fee of EUR 180 shall be charged for applications for an authorised stay of 18 months¹ as referred to in Article 7(3a).

3. In addition to the criteria set out in Article 11, points (b) and (c), of Regulation (EU) No xxx/201x [Visa Code (recast)], applicants shall present a travel document that is recognised by the Member State competent for examining and deciding on an application and at least one other Member State to be visited.

~~4. In addition to the categories of persons listed in Article 12(7) of Regulation (EU) No xxx/201x [Visa Code (recast)], nationals of third countries listed in Annex II of Council Regulation (EC) No 539/2001 shall be exempt from the requirement to give fingerprints. In those cases, the entry 'not applicable' shall be introduced in the VIS in accordance with Article 8(5) of Regulation (EC) No 767/2008.~~

5. In addition to the supporting documents listed in Article 13(1) of Regulation (EU) No xxx/201x [Visa Code (recast)], applicants shall present:

- (aa) where applicable, proof that they belong to one of the categories of applicants listed in Article 1(2)(a) or (b) by means of the applicant's employment contract or any other contract(s) with the organiser(s) of the tour or event(s);
- (a) appropriate proof supporting the applicant's that they intend² to stay in the territory of two or more Member States for longer than 90 days in any 180-day period without staying for more than 90 days in any 180-day period in the territory of any of these Member States;

¹ Moved from Article 7(3b).

² Reverting to the initial wording in the Commission's proposal.

(b) proof that they have valid sickness insurance for all risks normally covered for nationals of the Member States to be visited.

~~(d) the criminal record or its equivalent authenticated by the appropriate authority of the country of habitual residence of the applicant and, if so requested by the consulate, translated by a sworn translator.~~

6. The possession of sufficient means of subsistence and a stable economic situation shall be demonstrated by means of salary slips or bank statements covering a period of 12 months prior to the date of the application, and/or supporting documents that demonstrate that applicants will benefit from or will acquire sufficient financial means lawfully during their stay.

~~7. If the purpose of the visit requires a work permit in one or more Member States, when applying for a touring visa, it shall be sufficient to prove the possession of a work permit in the Member State competent to examine and decide on an application for a touring visa. Holders of a touring visa shall be allowed to apply in the Member State where they are legally present for the work permit required in the Member State to be visited next.~~

8. Consulates may waive the requirement to present one or more supporting documents if:

(a) the company organising the event or the employer of the applicant are known for their integrity and reliability ~~or if sufficient proof of their integrity and reliability is presented to the consulate, or~~

(b) if the applicants is known for his / her integrity and reliability ~~or if sufficient proof of his / her integrity and reliability is presented to the consulate~~ (...)

~~9. The application for a touring visa shall be lodged no earlier than 60 days from the date of expiry of the previously issued short stay visa, long stay visa or residence permit.~~

Article 6

Examination of and decision on an application

1. Articles 16 and 17, Article 18(1), (4), (5), (9), (10) and (11), Article 19 and Article 20(5), last sentence, of Regulation (EU) No xxx/201x [Visa Code (recast)] shall apply.
2. In addition to the verifications provided in Article 17(1) of Regulation (EU) No xxx/201x [Visa Code (recast)] to assess the admissibility of the application, the competent consulate shall verify whether the travel document satisfies the requirement set out in Article 5(3).
3. The examination of an application for a touring visa shall include, in particular, the assessment of whether applicants have sufficient financial means of subsistence for the whole duration of the intended stay, including their accommodation, unless it is provided by the inviting or hosting company, organisation or institution.

OPTION A

4. The examination of an application for a touring visa and decision on that application shall be conducted irrespective of stays authorised under previously issued short-stay visas or a short-stay visa waiver, long-stay visas or residence permits.

OPTION B

4. The consulate shall verify whether applicants have stayed on the territory of the Member States in any of the 90 days preceding the intended stay, irrespective of possible stays authorised under national long-stay visas or residence permits.¹

¹ In case option B is chosen, paragraph 7(3) should be added to Article 7.

5. Applications shall be decided on within ~~20~~ 35 calendar days of the date of the lodging of an admissible application. Exceptionally, this period may be extended for up to a maximum of 60 calendar days.

Article 7

Issuing of the touring visa

1. Article 21(6), Article 24(1), (3) and (4), Article 25, Article 26(1) and (5), Articles 27 and 28, Article 29(1), point (a)(i) to (iii), (v) and (vi), and point (b), and Article 29(3) and (4) of Regulation (EU) No xxx/201x [Visa Code (recast)] shall apply.
2. The touring visa shall allow for multiple entries to the territory of all Member States, without prejudice to paragraph 5.

OPTION A

3. The length of authorised stay shall be decided on the basis of a thorough examination of the application. The length of authorised stay shall not exceed one year in any two-year period, but it can be extended for up to a further year in accordance with Article 8.

OPTION B

3. The length of authorised stay shall be decided on the basis of a thorough examination of the application. The length of authorised stay shall not exceed one year but it can be extended for up to a further year in accordance with Article 8.

3a. For applicants falling into the categories listed in Article 1(2)(a) or (b), the maximum length of authorised stay can be 18 months, provided that the organiser(s) of the tour or event(s) or the employer of the applicant are known to the consulate for their integrity and reliability.

3b. A fee of EUR 180 shall be charged for applications for an authorised stay of 18 months.¹

¹ Moved to Article 5(2a).

4. The period of validity of the touring visa shall correspond to the length of authorised stay within the Schengen area ~~shall correspond to the period of validity of the touring visa.~~

5. If applicants hold a travel document that is not recognised by ~~one or more, but not all~~ Member States, the touring visa shall be valid only for the territory of the Member States which recognise the travel document, ~~provided that the intended stay is longer than 90 days in any 180-day period in the territory of the Member States concerned.~~

6. The touring visa shall be issued in the uniform format for visas as set out in Council Regulation (EC) No 1683/9543 with the heading specifying the type of visa with the letter "T".

7. In addition to the reasons of refusal listed in Article 29(1) of Regulation (EU) No xxx/201x [Visa Code (recast)], a visa shall be refused if applicants ~~do not provide~~:

(-a) do not provide proof that they belong to one of the categories of applicants listed in Article 1(2)(a) or (b), where applicable;

(a) do not provide appropriate proof that they intend to stay in the territory of two or more Member States for longer than 90 days in any 180-day period without staying for more than 90 days in any 180-day period in the territory of any of these Member States;

(b) do not provide proof that they have valid sickness insurance for all risks normally covered for nationals of the Member States to be visited;

(c) do not provide the employment contract, where applicable, between the applicant and the company organizing the event at which he / she has to perform or his employer, if the latter is not the organiser of the event;

(d) do not provide the criminal record or its equivalent authenticated by the appropriate authority of the country of habitual residence of the applicant and translated by a sworn translator, if so requested by the consulate;

IN CASE OPTION B IS CHOSEN IN ARTICLE 6(4)

[e. have stayed on the territory of the Member States in any of the 90 days preceding the intended stay on the basis of a uniform visa, a visa with a limited territorial validity or an exemption from the visa requirement pursuant to Regulation (EC) No 539/2001.]

8. 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 II.

Article 8

Modification of an issued visa

1. Article 30(1), (3), (6) and (7) and Article 31(1) to (3) and (5), (7) and (8) of Regulation (EU) No xxx/201x [Visa Code (recast)] shall apply.

2. ~~In addition to the possibility of extension for specific reasons provided in Article 30(1) of Regulation (EU) No xxx/201x [Visa Code (recast)], holders of a touring visa may apply for the an extension in the territory of the Member States. Consulates may grant extension if the holders of a touring visa can provide proof supporting the necessity for such extension not earlier than 90 days and not later than 15 days before the expiry of their touring visa.~~

3. ~~The consulate of the Member State to be visited next or the consulate representing the Member State to be visited next shall be competent to examine and decide on an application for extension.~~

4. ~~Applicants shall request the extension by submitting a completed application form as set out in Annex I.~~

5. ~~A fee of EUR 30 shall be charged for each application for an extension.~~

6. ~~As regards a work permit, Article 5(7) shall apply for extensions, where applicable.~~

7. ~~Decisions shall be taken within 15 30 calendar days of the date of the lodging of an application for an extension.~~

8. ~~When applying for an extension, applicants shall prove that they continue to fulfil the entry and visa issuing conditions and to comply with the requirement not to stay for more than 90 days in any 180-day period in the territory of a single Member State.~~

9. ~~During the examination of an application for an extension, the competent authority may in justified cases call applicants for an interview and request additional documents.~~

~~10. An extension shall not exceed one year 60 calendar days, and the overall length of an authorised stay, that is, the length of the initially authorised stay and its extension, shall not exceed two years.~~

~~11. A decision to refuse an extension and the reasons on which it is based shall be notified to the applicant by means of the standard form set out in Annex II.~~

~~12. Applicants whose application for an extension has been refused shall have the right to appeal. Appeals shall be introduced against the Member State that has taken the final decision on the application for an extension and in accordance with the national law of that Member State. Member States shall provide applicants with detailed information regarding the procedure to be followed in the event of an appeal, as specified in Annex II.~~

~~13. 2. A decision on annulment or revocation of a touring visa and the reasons on which it is based shall be notified to the applicant by means of the standard form set out in Annex II.~~

Article 12

Amendment to the Convention implementing the Schengen Agreement

Article 20(2) of the Convention implementing the Schengen Agreement shall be replaced by the following:

‘2. Paragraph 1 shall not affect each Contracting Party’s right to extend beyond 90 days an alien’s stay in its territory in exceptional circumstances.’

Article 13

Amendments to Regulation (EC) No 562/2006

Regulation (EC) No 562/2006 is amended as follows:

(1) Article 5 is amended as follows:

(a) in paragraph 1, point (b) is replaced by the following:

‘(b) they are in possession of a valid visa, if required pursuant to Council Regulation (EC) No 539/2001*, or hold a valid touring visa as defined in Article 3(2) of Regulation (EU) No xxx/201x of xxx **, valid residence permit or a valid long-stay visa;

* Council Regulation (EC) No 539/2001* of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p. 1).

** Regulation (EU) No xxx/201x of the European Parliament and of the Council of xx.xx.201x establishing a touring visa and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 562/2006 and (EC) No 767/2008 (OJ L xxx).’

~~(b) paragraph 1a is replaced by the following:~~

~~‘1a. For the purposes of implementing paragraph 1, the date of entry shall be considered as the first day of stay on the territory of the Member States and the date of exit shall be considered as the last day of stay on the territory of the Member States. Periods of stay authorised under a touring visa, residence permit or a long-stay visa shall not be taken into account in the calculation of the duration of stay on the territory of the Member States.’~~

(c) the following paragraph 3a is inserted:

‘3a. Paragraphs 1 ~~to 3~~ and 2 shall be applicable *mutatis mutandis* for entries related to stays on the basis of a valid touring visa.’

(2) Article 7(3) is amended as follows:

(a) point (aa) is replaced by the following:

‘(aa) if the third country national holds a visa or touring visa referred to in Article 5(1)(b), the thorough checks on entry shall also comprise verification of the identity of the holder of the visa/touring visa and of the authenticity of the visa/touring visa, by consulting the Visa Information System (VIS) in accordance with Article 18 of Regulation (EC) No 767/2008 of the European Parliament and of the Council***;

*** Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L, 218, 13.8.2008, p. 60).’

(b) the penultimate sentence of point (ab) is replaced by the following:

‘However, in all cases where there is doubt as to the identity of the holder of the visa or touring visa and/or the authenticity of the visa or touring visa, the VIS shall be consulted systematically, using the number of the visa sticker in combination with the verification of fingerprints.’

(c) in point (c), point (i) is replaced by the following:

‘(i) verification that the person is in possession of a valid visa, if required pursuant to Regulation (EC) No 539/2001, or valid touring visa, except where he or she holds a valid residence permit or valid long-stay visa; such verification may comprise consultation of the VIS in accordance with Article 18 of Regulation (EC) No 767/2008;’

Article 14

Amendment to Regulation (EC) No 767/2008

Regulation (EC) No 767/2008 is amended as follows:

(1) Article 1 is replaced by the following:

‘This Regulation defines the purpose of, the functionalities of and the responsibilities for the Visa Information System (VIS), as established by Article 1 of Decision 2004/512/EC. It sets up the conditions and procedures for the exchange of data between Member States on applications for short-stay visas and touring visas as defined in Article 3(2) of Regulation (EU) No xxx/201x of xxx* and on decisions taken in relation thereto, including decisions to annul, revoke or extend the visa, to facilitate the examination of such applications and related decisions.

* Regulation (EU) No xxx/201x of the European Parliament and of the Council of xx.xx.201x establishing a touring visa and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 562/2006 and (EC) No 767/2008 (OJ L xxx).’

(2) Article 4 is amended as follows:

(a) in point 1 the following point is added:

‘(e) ‘touring visa’ as defined in Article 3(2) of Regulation (EU) No xxx/201x;’

(b) points 4 and 5 are replaced by the following:

‘4. ‘application form’ means the uniform application form for visas in Annex I to Regulation (EC) No xxx/201x [Visa Code (recast)] or Annex I to Regulation (EU) No xxx/201x;

5. ‘applicant’ means any person subject to the visa requirement pursuant to Council Regulation (EC) No 539/2001**, who has lodged an application for a visa, or any person who has lodged an application for a touring visa pursuant to Regulation (EU) No xxx/201x;

** Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p.1). ’

~~(3) In Article 14(2) the following point (e) is added:~~

~~‘(e) request for extension and continued fulfilment of the conditions by a holder of a touring visa.’~~

Article 16

Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
 2. It shall apply from [~~6~~ 12 months after the entry into force of this Regulation].
 3. Article 12 shall apply from [5 years after the entry into force of this Regulation].
 4. This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.
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