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NOTE

From:	Presidency
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Subject:	Connection between the facilitations set out in the draft Regulation of the European Parliament and of the Council on the Union Code on Visas (Visa Code) (recast) and readmission

Before the last meeting of the Visa Working Party on 3 March 2016, the Presidency had prepared some drafting suggestions in 5689/2/16 concerning the link between the procedural facilitations set out in the recast of the Visa Code and cooperation on readmission (see 15507/15), in particular under Article 13.

During the discussions at that meeting, several delegations and the Commission raised concerns about the feasibility and the legality of the procedure suggested under Article 13.

Therefore, taking into account the comments and remarks made by delegations and the Commission at the Visa Working Party, the Presidency has prepared the drafting suggestions (see Annex) in relation to outstanding issues with a view to the meeting of the JHA Counsellors on 21 March 2016.

Consequently, for the purpose of the discussions at that meeting, the Presidency invites delegations to examine the suggested text of the following provisions (**highlighted** in the Annex):

- Supporting documents: Article 13(2), (2a), (2b), (2c), (2d);
 - Visa fee: Article 14(3)(d) and (4a);
 - Representation arrangements: Article 39(1a);
 - Information to be provided to the public: Article 45(1)(i);
 - Notification: Article 52(1)(bb) and (j).
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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 Council;
 - (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.

2. Points (b) and (c) (...) of paragraph 1 **shall** not apply to applicants who are VIS registered regular travellers and who have lawfully used the **visas** and are nationals of countries included in the list of third countries that cooperate on readmission.

2a. A list of countries that cooperate on readmission whose nationals shall benefit of the procedural facilitations referred to in paragraph 2 and Articles 14(3)(d), 18(2) and 21(3) and (4) shall be established by the Commission by means of an implementing act. The Commission shall adopt this implementing act at the latest one year after the entry into force of this Regulation.

When establishing the list, the Commission shall take into consideration:

- (a) Existence of EU Readmission Agreements and practical experiences of Member States in the implementation of these agreements,

- (b) Existence of bilateral readmission agreements and practical experiences of Member States in the implementation of these agreements,
- (c) Practical experiences of Member States in their cooperation with third country authorities in view of
 - (i) timely identification of persons subject of a return decision;
 - (ii) recognition of the European travel document for the return of illegally staying third-country nationals (EU Laissez Passer);
 - (iii) timely delivery of the necessary travel documents;
 - (iv) timely fulfilment of other administrative requirements;
 - (v) organising and agreeing swiftly on practical modalities for effective readmission;
 - (vi) the acceptance of charter flights and joint return flights.

OPTION 1

2b. Member states when experiencing difficulties in the cooperation on readmission with a third country included in the list, in particular with regard to the practical experiences referred to in paragraph 2a, letter c, shall notify the Commission and may request that the Commission adopts an implementing act to amend the list of third countries that cooperate on readmission.

2c. The Commission shall by means of implementing acts amend the list referred to in paragraph 2a in order to take into account difficulties in the cooperation on readmission and the notifications by the Member states. When those notifications concerning the same third country are made by at least four Member states representing more than 35% of the population of the participating member states, the Commission shall immediately amend the list and remove that third country from the list of third countries that cooperate on readmission. The Commission shall in any event assess the need for amending the list at least on an yearly basis.

2d. The implementing acts referred to in paragraph 2a and 2b shall be adopted in accordance with the examination procedure referred to in Article 51(2).

OR OPTION 2

2b. A Member State may at any moment suspend the application of the Articles 13(2), 14(3)(d), 18(2) and 21(3) and (4) to nationals of a country included in the list referred to in paragraph 2a, if the Member State experiences practical problems with that country with at least one of the criteria referred to in paragraph 2a(c). The duration of the suspension shall not exceed 12 months. The Member State may prolong this period when practical problems with the criteria referred to in paragraph 2a(c) still occur. Any subsequent prolongations shall not exceed 12 months.

2c. When suspending the application of the Articles 13(2), 14(3)(d), 18(2) and 21(3) or prolonging such a suspension, the Member State shall immediately notify the Commission. The Commission shall without delay inform the Member States thereof. The Commission shall take these notifications into consideration when assessing the need for amending the list. A country shall be removed from the list if the Commission has been notified within the last 12 months at least by four Member States representing more than 35% of the EU population.

2d. The implementing acts referred to in paragraph 2a and 2b shall be adopted in accordance with the examination procedure referred to in Article 51(2).

3. (...)

Family members of Union citizens as referred to in Article 3 of Directive 2004/38/EC shall (...) **submit** documentary evidence proving that they travel to accompany or join the Union citizen and the family relationship with the Union citizen as referred to in Article 2(2) or the other circumstances referred to in Article 3(2) of that Directive. **Family members of Union citizens as referred to in Article 3 of Directive 2004/38/EC may be requested to submit originals of those documents.**

4. The list of supporting documents which may be requested from the applicant in order to verify the fulfilment of the conditions listed in paragraph 1 is set out in Annex II.

5. Consulates may waive one or more of the requirement to provide one or more of the documents referred to in paragraph 1(a) to (d) in the case of an applicant known to them for his integrity and reliability, in particular the lawful use of previous visas, if there is no doubt that he will fulfil the requirements of Article 5(1) of Regulation (EC) No 562/2006 at the time of the crossing of the external borders of the Member States.
6. **(moved from paragraph 9)** Within local Schengen cooperation lists of supporting documents shall be prepared in each jurisdiction in order to take account of local circumstances.
7. Member States may require applicants to present a proof of sponsorship and/or private accommodation by completing a form drawn up by each Member State. That form shall indicate in particular:
- (a) whether its purpose is proof of sponsorship and/or of private accommodation;
 - (b) whether the sponsor/inviting person is an individual, a company or an organisation;
 - (c) the identity and contact details of the sponsor/inviting person;
 - (d) the applicant(s);
 - (e) the address of the accommodation;
 - (f) the length and purpose of the stay;
 - (g) possible family ties with the sponsor/inviting person;
 - (h) the information required pursuant to Article 37(1) of Regulation (EC) No 767/2008.

In addition to the Member State's official language(s), the form shall be drawn up in at least one other official language of the institutions of the Union. A specimen of the form shall be notified to the Commission.

8. When applying for an airport transit visa, the applicant shall present:
- (a) documents in relation to the onward journey to the final destination after the intended airport transit;
 - (b) information enabling an assessment of the applicant's intention not to enter the territory of the Member States.

9. **(moved from paragraph 6)** The consulate shall start processing the visa application **of a VIS registered regular traveller** on the basis of (...) copies of the supporting documents. (...) The consulate may ask for original documents from **VIS registered regular travellers (...)** where there is doubt about the authenticity of a specific document. **Other applicants shall provide the original supporting documents, unless otherwise decided by the consulate.**

10. Without prejudice to paragraph 1, Member States may provide exemptions from the list of supporting documents referred to in paragraphs 4 and 9 in the case of applicants attending major international events organised in their territory that are considered particularly important due to their tourism and/or cultural impact.

11. The Commission shall by means of implementing acts adopt the lists of supporting documents to be used in each jurisdiction in order to take account of local circumstances. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 51(2).

Article 14

Visa fee

1. Applicants shall pay a visa fee of EUR 60.
2. Children from the age of six years and below the age of 12 years shall pay a visa fee of EUR 35.
- 2a. The visa fee shall be revised regularly in order to reflect the administrative costs.
3. The following categories shall pay no visa fee:
 - (a) **children under the age of six years;**
 - (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/EC, travelling for the purpose of carrying out scientific research or participating in a scientific seminar or conference;

(d) holders of diplomatic and service passports issued by countries listed in the common list referred to in Article 13(2a);

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

(f) (...)

(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. Member States may, in individual cases, waive or reduce the amount of the visa fee to be charged when to do so 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.

4a. The visa fee may be waived ~~for holders of diplomatic and service passports and~~ for children from the age of six years and below the age of 12 years.

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.

Representation arrangements

1. A Member State may agree to represent another Member State that is competent in accordance with Article 5 for the purpose of examining **and taking decisions on visa** applications (...) 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.

1a. **(moved from paragraph 4)** Member States (...) shall **cooperate and** endeavour to conclude **bilateral arrangements to prevent a situation in which the Member State that is competent for examining and deciding on an application in accordance with Article 5(1) or (3), is neither present nor represented in the third country where the applicant legally resides or is legally present as referred to in Article 6.**

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;
- (c) (...) may include an arrangement in case of national suspensions referred to in Article 13(2b).

4. **(moved to paragraph 1a.)**

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 **the latest one month** before they enter into force or are terminated, **except in the case of force majeure**.
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.
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 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;
- (i) **the list of third countries referred to in Article 13(2a) and national suspensions referred to in Article 13(2b).**

2. The representing and represented Member State shall inform the general public about representation arrangements as referred to in Article 8-39 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.

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(5);

(bb) the authorities competent for issuing processing visa applications, as referred to in Article 7(3a);

(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;

(j) national suspensions referred to in Article 13 (2b). third countries whose nationals cannot benefit are excluded from the procedural facilitations are excluded from the provisions referred to in Articles 13(21)(b) and (c), 14(3)(d), 18(2) and 21(3) and (4) because of newly arising practical problems with at least one of the matters criteria referred to in Article 13(2a)(c) in the cooperation with a third country on readmission.

(k) (...)

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).