



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

**VISA 73
CODEC 267
COMIX 166**

OUTCOME OF PROCEEDINGS

of:	Visa Working Party/Mixed Committee (EU-Iceland/Liechtenstein/Norway/Switzerland)
dated:	18-19 February 2008
No. prev. doc.:	5588/08 VISA 19 CODEC 79 COMIX 54
No. Cion prop.:	11752/1/06 VISA 190 CODEC 771 COMIX 662 REV 1
Subject:	Draft Regulation of the European Parliament and of the Council establishing a Community Code on Visas

The Visa Working Party examined Articles 1 and 2 on the basis of the proposal from the Commission and of the compromise proposals from the Presidency. The outcome of this examination is set out in the Annex to this note.

TITLE I: General provisions*Article 1***Objective and scope**

1. This Regulation establishes the rules for processing visa applications for intended stays in the territory of the Member States, not exceeding three months in any six month period.

1bis¹: "Processing² of a visa application" covers the following:

- **Providing information to the visa applicant on the requirements for applying for a visa, on the Member State consulate responsible for examining the application and, on the visa procedure**
- **Making the visa application form available to visa applicants**
- **Organising an appointments system for the reception of visa applicants**
- **Receiving the application form³ and supporting documents**
- **Collection of biometric identifiers from visa applicants**
- **Collection of the fee as provided for in Article 16 of the draft Visa Code**
- **Verification whether the application is complete**
- **Examination of the visa application⁴**
- **Decision on the visa application**
- **Printing and affixing the visa sticker in the passport**
- **Returning passport (and original supporting documents) to the visa applicant."**

¹ **PT** entered a reservation because it thought the listing should be in the practical guide.

² **FR, NL, HU, BE, IT, ES** were of the opinion that a narrow definition of "processing of the visa application" should apply and only cover the tasks accomplished by a diplomatic mission or a consular post, which cannot be outsourced. **HU** and **MT** proposed to have the listing in Art.2. **DE, SE** and **EE** entered a scrutiny reservation. **NL, FI, EE** raised the need to define the "processing". **NL** has sent a proposal to the Visa Working Party (see 7415/08).

³ **FR** proposed to redraft along the lines of "Collection of application forms and supporting documents".

⁴ **FR** proposed to redraft along the lines of "Receiving and examining the visa application".

2. Those rules shall apply to any third country national, who must be in possession of a visa when crossing the external borders pursuant to Council Regulation (EC) No 539/2001 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 requirement¹, without prejudice to
- (a) the rights of free movement enjoyed by third country nationals who are family members of citizens of the Union,
 - (b) the equivalent rights enjoyed by third-country nationals, who, under agreements between the Community and its Member States, on the one hand, and these third-countries, on the other, enjoy rights of free movement equivalent to those of Union citizens and members of their families².
3. This Regulation also defines the list³ of third countries whose nationals require an airport transit visa and establishes the rules for processing visa applications for transit through the international transit areas of Member States' airports.

¹ OJ L 81, 21.3.2001, p. 1.

² **COM** emphasised that paragraphs a) and b) only referred to existing rights of these categories of persons and did not create any new ones. COM would be willing to clarify the text if need be.

³ **FR** suggested the following formulation of this paragraph as this delegation was not in favour of introducing one single list of third countries whose nationals require ATVs:

"3. This Regulation also defines the lists of third countries whose nationals require an airport transit visa and establishes the rules for processing visa applications for transit through the international transit areas of Member States' airports."

Article 2

Definitions

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

- (1) "third-country national" means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;
- (2) "a visa" shall mean an authorisation issued by a Member State with a view to:
 - (a) entry¹ **for transit through or** an intended stay in that Member State or **for transit through or an intended stay** in several Member States of a duration of no more than three months in total² **or**,³
 - (b) transit through the international transit areas of the airports of a Member State;
- (3) A "uniform visa" (**type "C" visa**) means a visa issued with the validity of up to five years for one, two or unlimited number of entries, which is valid for the entire territory of the Member States;

¹ Responding to queries from **AT** and **PT** who wished to include the fact that mere possession of a visa does not confer automatic right of entry, **COM** recalled that that principle was a right flowing from the issued visa and should not be contained in the definition. The principle is covered by Article 24 of the draft Visa Code.

² Replying to a question from **AT**, who wished to add a reference to multi-annual visa, **COM** noted that this definition had been copied from Regulation 539/2001. **HU** wished to add a reference to double-entry visa.

³ **SE, ES, AT, EL, SK, BE, PT**: scrutiny reservation.

- (4) "visa with limited territorial validity" (**type "LTV C" visa**) **means visa** entitling the holder only to stay in or transit through the territory of the issuing Member State or several Member States;
- (5) "airport transit visa" (type "A" visa) means a visa required with a view to a transit through the international transit areas of the airports of Member States by nationals from certain third countries, as an exception to the principle of free transit laid down in annex 9 to the Chicago Convention on International Civil Aviation;
- (6) "recognised travel document" means a travel document issued by a third country, whose nationals must be in possession of a visa when crossing the external borders pursuant to Regulation (EC) No 539/2001, and recognised by Member States for the purpose of affixing visas^{1 2};

¹ **COM** recognised that this definition did not cover travel documents issued by, for instance, international organisations and would reflect upon a better formulation. **HU** suggested that if this definition were to remain in the text reference should be made to the various organisations etc issuing travel documents as well as to "holders" of these documents rather than "nationals".

² The Presidency has proposed to redraft this point as follows:

6) "recognised travel document" means:

- (a) a travel document issued by a third country**
- (b) a travel document issued by an international [body][organisation] ;**
- (c) a travel document for refugees issued in accordance with the Convention of 1951 on the Status of Refugees; or**
- (d) a travel document for stateless persons issued in accordance with the Convention of 1954 on the Status of Stateless Persons**
- (e) a travel document for aliens issued by the Member States which is recognised by Member States for the purpose of affixing visas;**

As the text could not be accepted by delegations, the **Chair** asked them to forward new proposals to the Presidency.

- (7) "visa sticker" means the uniform format for visas as defined by Regulation (EC) No 1683/95 and is the physical form of the visas defined in paragraphs 3, 4 and 5;
- (8) "separate sheet for affixing a visa" means the uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up to form as defined by Regulation (EC) No 333/2002 **and to persons holding recognised travel documents with no free page to affix a visa sticker**¹;
- (9) "consulate" means a Member State's diplomatic mission or consular post authorised to issue short stay visas.²
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¹ **MT, CY, AT, BE, EL, FR** entered substantial reservations. **FR, HU, PT** were of the opinion that this last eventuality should be given in exceptional cases only. The **Chair** added that a practical solution is needed where the passport has no sheet left.

² **FR** informed that a broader term than "diplomatic mission or consular post" had to be used since in France a "préfet" was allowed to issue visas as well. **COM** stressed that there was no reference to "préfet" in the current text of the Common Consular Instructions. **PT** suggested to add "...for the purpose of this Regulation" since there is a clear distinction to be made between these two types of missions.