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NOTE

from: Presidency

to: Visa Working Party

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

Delegations will find attached a note from the Presidency with a view to the discussions during the Visa Working Party meeting on 26-27 March 2008.

PART I - REVISITING ARTICLES 1 AND 2

The Presidency would like to revisit some of the issues discussed at the last meeting of the Visa Working Party (18 and 19 February 2008) in connection with Articles 1 and 2 of the Draft Regulation of the European Parliament and of the Council establishing a Community Code on Visas. The purpose is to confirm some of the solutions proposed during this discussion and to facilitate the discussion on the following Articles.

The issues to be revisited are the following and marked **in bold**¹:

Article 1 – Objective and scope

1. New formulation of paragraph 1:

1. This Regulation establishes the rules **related to the issuing visas** for intended stays in the territory of the Member States not exceeding three months in any six month period."

2. New paragraph 1bis - processing of a visa application:

"1bis: "Processing of a visa application" covers the following:

- **assessing the correctness and completeness of an application;**
- **verifying the competence of the consulate and the payment of the charged fee;**
- **interviewing the applicant and/or consulting visa authorities, if applicable;**
- **entering the relevant application data into the EU visa information system;**
- **deciding on the application;**
- **printing and affixing the visa sticker;**
- **producing information for the applicant about the reasons for refusal and the right to appeal against the decision, if applicable;**

¹ Changes indicated as compared to doc. 5588/08 and 6979/08.

- **giving notice of the decision on the application, at which point the travel document and/or refusal decision may be collected by the applicant and**
- **filing the application and accompanying documents.**

3. New formulation of Paragraph 3

3. **This Regulation also determines the third countries whose nationals are required to hold 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

1. New formulation of paragraph 2 (a) - MERGER of transit visa into short stay visa:

- "(2) (a)"a visa" shall mean an authorisation issued by a Member State with a view to entry for **transit through or** an intended stay in that Member State or for **transit through or and intended stay** in several Member States of a duration of no more than three months in total, **or"**

Subparagraph (b) = delete. Subparagraph (c): no changes.

2. New formulation of paragraph 6 - recognised travel document:

- (6) "recognised travel document" means a travel document recognised by one or more Member States in accordance with the Table of travel documents entitling the holder to cross the external borders and which may be endorsed with a visa;

3. Paragraph 8 – deleting the proposed addition and reformulation of Article 27:

- (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 pages to affix a visa sticker.~~

4. New paragraph 9 – simplification of terminology:

- (9) **"consulate"** means a Member State's diplomatic mission or consular post authorised to issue short stay visas."

PART II - DEFINING MISUSE, VISA D AND ARTICLES 3 - 9, 21, 22

In the second part of the document the Presidency continues with the proposed changes to the Articles 3 - 9, 21 and 22 of the Draft Visa Code.

However, before discussing these changes, the Presidency would like to open the two issues discussed at the informal meeting in Ljubljana:

- a) **misuse** - should the definition of "misuse" be added to the Article 2 of the Draft Visa Code?
- b) **visa D** - should the new concept of visa D be introduced, replacing now existing types of visa D and visa D+C?

Article 3

Authorities competent for processing visa applications

- 1. **As a general rule, visa applications shall be processed by Member States consulates, without prejudice to Articles 9, 37 and 38.**
- 2. **By way of derogation from paragraph 1, visa applications may, in exceptional cases, be processed at the borders by the authorities responsible for checks on persons.**
- 3. **A Member State may require the involvement of other visa issuing authorities recognised by Member States in the processing of visa applications, referred to in paragraphs 1 and 2.**

Article 4
"Territorial" competence

1. Third country nationals shall apply for a visa at the ~~diplomatic mission or consular post~~ **consulate** of a Member State in their country of residence **or at the consulate of that Member State situated in another third country, and whose jurisdiction covers the applicant's country of residence.**
2. By way of derogation from paragraph 1, applications may in urgent cases be lodged by third country nationals, legally present in a third-country different from their country of residence in that third-country. Such applicants shall provide justification, for lodging the application in that country and there must be no doubt as to the applicant's intention to return to the country of residence. Additionally, applications by bona fide applicants legally present in a third-country different from their country of residence may be lodged in that third-country. In that case, ~~the diplomatic mission or consular post~~ **consulate** located in the applicant's country of residence or the central authorities of the issuing Member State may be consulted.

EP: AMD 8 on Article 4 (1): "forced representation"

AMD 66-67: linked to applications from non-residents

Article 5

Member State responsible for processing a visa application

1. New formulation of paragraph 1 (1- or 2-entries short stay visa)

1. The ~~diplomatic mission or consular post~~ **consulate** responsible for processing an application for a one or two-entries short-stay visa shall be:
 - (a) the ~~diplomatic mission or consular post~~ **consulate** of the Member State in whose territory the sole ~~or main~~ destination of the visit is located, or
 - (b) **the consulate of the Member State in whose territory the first destination of the visit is located, if the intended travel covers several destinations, or**
 - (c) **the consulate of one of the Member States in whose territory the intended travel will be, if the first destination of the visit cannot be determined, or**
 - (d) if neither of the criteria in (a) – (c) are applicable, the ~~diplomatic mission or consular post~~ **consulate** of the Member State whose external border the applicant intends to cross in order to enter and stay ~~into~~ the territory of the Member States, or
 - (e) **if the Member State responsible for processing the application in accordance with (d) is not present or represented for the purpose of issuance of short stay visas in the applicant's country of residence, the consulate of another Member State.**

EP/ AMD 68-9-69-10-11: if new "flexible approach" – as suggested below – is agreed upon, some of EPs concerns have been met and the suggestions by EP basically leaving it to applicants to decide where to apply, are unrealistic.

2. New paragraph 2 - multiple entry visas

2. The consulate responsible for processing an application for a multiple entry short-stay visa shall be:
- (a) the consulate of the Member State in whose territory the usual destination of the visit is located, or
 - (b) the consulate of the Member State in whose territory one of the usual destination of the visit is located, or
 - (c) the consulate of the Member State in whose territory the first destination of the visit is located, if no usual destination can be determined.

3. Slight modification of the former paragraph 2 and now new paragraph 3

3. The diplomatic mission or consular post responsible for processing an application for a short stay visa for the purpose of transit shall be:
- (a) in the case of transit through only one Member State, the ~~diplomatic mission or consular post~~ **consulate** of the Member State concerned, or
 - (b) in the case of transit through several Member States, the ~~consulate diplomatic mission or consular post~~ **consulate** of the Member State whose external border the applicant intends to cross to start the transit.

4. Slight modification of the paragraph 4

The ~~diplomatic mission or consular post~~ consulate responsible for processing an application for an airport transit visa shall be:

- (a) in the case of a single airport transit, the ~~diplomatic mission or consular post~~ consulate of the Member State on whose territory the transit airport is situated, or
- (b) in the case of double or multiple airport transit, the ~~diplomatic mission or consular post~~ consulate of the Member State on whose territory the first transit airport is situated.

Article 6

Competence in relation to issuance of visas to third country nationals legally present within a Member State's territory

Third country nationals who are legally staying in the territory of a Member State, without holding a residence permit of that Member State, allowing them to travel without holding a visa as provided for in Article 5(1)(b) and Article 34(1)(a) of the Schengen Borders Code, and who have justified reasons for travelling to another Member State, shall apply for a visa at the ~~diplomatic mission or consular post~~ consulate of the Member State of destination.

Article 7

Arrangements on representation

EP: AMD 71-12-72: "forced" representation + introduction of complicated rules on geographical distances. Introduction of flexibility as to deadline for notification of representation arrangements (= wish of some MS)

1. Without prejudice to Article 5, ~~the diplomatic mission or consular post~~ the **consulate** of a Member State may agree to represent another Member State.....
3. The represented Member State shall inform the Commission about new arrangements on representation or the termination of such arrangements ~~at the latest three months~~ before the agreement enters into force or terminates.
4. Simultaneously, the representing Member State shall inform both ~~the diplomatic missions or consular posts~~ **consulates** of other Member States and the delegation of the European Commission in the jurisdiction concerned when arrangements on representation have been concluded and when they enter into force **and when they terminate**.
5. The ~~diplomatic mission or consular post~~ **consulate** of the representing Member State shall, ~~when acting on behalf of another Member State,~~ comply with all the rules on the processing of applications for short stay visas, ~~transit visas~~ and airport transit visas set out in this Regulation and the issuing times set out in Article 20(1) shall apply.

6. When a ~~diplomatic mission or consular post~~ **consulate** of the representing Member State envisages refusing an application, the complete file shall be submitted to the central authorities of the represented Member State or to the designated regional embassy in order for them to take the final decision on the application within the time limit set out in Article 20(1).
7. If the ~~diplomatic mission or consular post~~ **consulate** of the representing Member State decides to cooperate with commercial intermediaries or ~~to outsource part of the visa handling process~~ with external service providers, such procedures shall also cover applications handled by way of representation. However, the central authorities of the represented Member State shall be duly informed in advance.

Article 8

Prior consultation of the Member States' own central authorities

1. A Member State may require its ~~diplomatic missions or consular posts~~ **consulate and authorities responsible for checks on persons** to consult its central authorities before issuing visas to nationals of certain third countries or specific categories of such nationals. The third countries in respect of whose nationals or specific categories of nationals such consultation is required shall be as set out in Annex I.
2. Such consultation shall be ~~without prejudice to the time limit for examining visa applications~~ **carried out within the time limits** set out in Article 20(1).
3. If a Member State represents another Member State pursuant to Article 7(1), the central authorities of the representing Member State shall ~~carry out the consultation~~ the central authorities of the represented Member States **according to the entries made in Annex I. provided in paragraph 1.**

EP: AMD 73 – replaced by <u>COMP AMD 20</u> (= COM proposal +addition on possible prolongation of time limit)

Article 9

Prior consultation and information of the central authorities of other Member States' central authorities

1. No comments on paragraph 1:

1. A Member State may require the central authorities of other Member States to consult its central authorities before issuing visas to nationals of specific third countries or specific categories of such nationals.

The third countries in respect of whose nationals or specific categories of nationals such consultation is required shall be as set out in Annex II.

2. New reaction time in paragraph 2 - five working days:

2. The central authorities consulted shall react within ~~three~~ **five** working days of receiving the request. The absence of a reply from the consulted authorities within this deadline shall be deemed an authorisation for the consulting central authorities to allow their diplomatic mission or consular post to issue the visa.

3. No comments on paragraph 3:

3. A Member State may require that its central authorities be informed only of visas issued by diplomatic missions or consular posts of other Member States to nationals of specific third countries or to specific categories of such nationals.

The third countries for whose nationals such information is required are marked by (*) in Annex II.

4. Slight modification of paragraph 4:

4. Prior consultation and information shall be carried out in accordance with Article ~~14(2)~~ 16 of the VIS Regulation no....

5. Deletion of paragraph 5:

~~5. — If a Member State represents another Member State pursuant to Article 7(1), the central authorities of the representing Member State shall carry out the consultation provided for in paragraph 1 and/or the information provided for in paragraph 3.~~

EP: AMD 74 – replaced by COMP AMD 21 (= COM proposal + deadline of FIVE days and addition on possible prolongation of time limit)

Article 21

Visa with Limited Territorial Validity

1. A visa with limited territorial validity (LTV) shall be issued exceptionally in the following cases:
 - (a) when ~~a diplomatic mission or consular post considers~~ **it is considered** necessary, on humanitarian grounds, for reasons of national interest or because of international obligations, to derogate from the principle that the entry conditions laid down in Article 5 (1) of the Schengen Borders Code, must be fulfilled;
 - (b) when ~~a diplomatic mission or consular post considers~~ **it is considered** necessary on humanitarian grounds, for reasons of national interest or because of international obligations, to issue a visa, although the prior consultation procedure has given rise to objections on the part of the consulted Member State;

- (c) **when it is considered necessary, on humanitarian grounds, for reasons of national interest or because of international obligations, to issue a visa, although the prior consultation has not been carried out;**
- (d) when ~~a diplomatic mission or consular post~~ for urgent reasons, justified by the applicant, ~~issues~~ a new visa **is issued** for a stay during the same six-month period to an applicant who, over this six-month period, has already used a visa allowing for a stay of three months.
- (e) **when it is considered necessary to issue a visa, if the VIS cannot be consulted.**

In the cases referred to in the ~~first~~ subparagraphs (a) and (d), the visa issued shall be valid only for the territory of the issuing Member State.

If the applicant holds a travel document that is not recognised by one or more, but not all, Member States, a visa valid for the territories of the Member States recognising the travel document shall be issued. If the visa issuing Member State does not recognise the applicant's travel document, the visa issued shall only be valid for that Member State.

2. **When a LTV has been issued in the cases described in points (a) and (b) of the first subparagraph of paragraph 1**, the central authorities of the **issuing** Member State ~~whose diplomatic mission or consular post has issued LTVs in the cases described in points (a) and (b) of the first subparagraph of paragraph 1~~ shall immediately circulate the relevant information to the central authorities of the other Member States.

Article 22
Airport transit visas

1. Nationals of the third countries included in the **common** list set out in Annex VII, shall be required to hold an airport transit visa, when passing through the international transit areas of airports situated on the territory of Member States.

Nationals of the third countries included in the national list set out in Annex VII shall be required to hold an airport transit visa, only when passing through the international transit areas of airports situated on the territory of those Member States who included a third country on this list.

The Member States shall revise the common list every six months after including a third country to this list in order to check whether the circumstances on the basis of which a third country has been included in the list still exist. If circumstances no longer exist the third country will be removed from the uniform list.

2. The following categories of persons shall be exempt from this requirement to hold an airport transit visa provided for in paragraph 1:
- (a) holders of a valid uniform ~~short stay or transit~~ visa, national long-stay visa and residence permit issued by a Member State,
 - (b) third-country nationals holding residence permits issued by Andorra, Japan, Canada, Monaco, San Marino, United States of America or Vatican guaranteeing the holder's unqualified return, and listed in Annex VIII;
 - (c) family members of citizens of the Union;
 - (d) holders of diplomatic passports;
 - (e) flight crew who are nationals of a contracting Party to the Chicago Convention on International Civil Aviation.