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**VISA 142
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COMIX 321**

OUTCOME OF PROCEEDINGS

of:	Visa Working Party/Mixed Committee (EU-Iceland/Liechtenstein/Norway/Switzerland)
dated:	26-27 March 2008
No. prev. doc.:	6979/08 VISA 73 CODEC 267 COMIX 166
No. Cion prop.:	11752/1/06 REV 1 VISA 190 CODEC 771 COMIX 662
Subject:	Draft Regulation of the European Parliament and of the Council establishing a Community Code on Visas

The Visa Working Party examined Articles 1, 2 and 3 on the basis of the proposal from the Commission and the compromise proposals from the Presidency (see 7661/08¹). The outcome of the examination is set out in the Annex to this note.

¹ **DE, EE and AT** entered a general reservation as they had not been in a position to examine the document before the meeting.

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

1. This Regulation establishes the rules **related to the issuing¹ of visas** for intended stays in the territory of the Member States not exceeding three months in any six month period.

1A²: "Processing of a visa application³" covers the following⁴:

- **assessing the correctness and completeness of the application⁵;**
- **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 data into the VIS;**
- **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 applicable⁶;**
- **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.**

¹ The term to be used has been questioned by several delegations: "handling", "processing", "issuing". **COM** thought that the wording of Art. 62(2)(b)(ii) should be used here: "...rules on visas for intended stays of no more than three months, including the procedures and conditions for issuing visas by Member States".

² **PT** entered a reservation because it thought the list should be in the practical guide.

³ Some delegations, including **SE** and **NL**, favoured a narrow definition of "processing".

⁴ **BE** proposed moving the definition to Article 2.

⁵ **BE** and **IT** raised the issue of the checking for correctness of the documents by external service providers (ESP). The Chair indicated that the specific tasks of those providers are touched upon in the draft Regulation on CCI biometrics and can be included in the draft Visa Code Regulation later on. **COM** stressed that ESPs could only check whether the application dossier was complete, not whether it was valid. **EE** proposed adding a reference to the taking of biometric data.

⁶ **FI** entered a reservation on this proposed provision and on the proposed wording of Art. 23 as well.

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 **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

For the purposes 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) entry 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 total**, or³
 - (b) transit through the international transit areas of the airports of a Member State;

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 ES, EL, SK, BE, PT, LV, CZ: scrutiny reservation.

- (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;
- (4) "visa with limited territorial validity" (**type "LTV C" visa**) means a 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 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 **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 visa¹**;
- (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 the form as defined by Regulation (EC) No 333/2002 (...);
- (9) **"consulate" means a Member State's diplomatic mission or consular post^{2 3} authorised to issue short stay visas.⁴**

¹ CZ entered a scrutiny reservation. COM found it unnecessary to add such a definition since it should be sufficient to refer to the said table, which already exists, and that the recognition of certain travel documents had to be discussed within another context.

² ES agreed with the new drafting proposed by the Presidency but stressed that the definition should only cover the "career consuls", not the "honorary" ones.

³ NO and SE stressed that the definition should also cover the central authorities. SE proposed a new drafting along the lines of: "...or consular post or other authorities authorized to issue short-stay visas."

⁴ NL supported FR in its request to have a broader term than "diplomatic mission or consular post" in order to cover the French "préfet" as visa issuing authority, and thought that the Dutch "Governor" (Antilles) should be covered as well. COM stressed that there was no reference to "préfet" in the current text of the Common Consular Instructions. DE entered a scrutiny reservation.

TITLE II: Receipt and processing of visa applications

Chapter I

Authorities taking part in the processing of visa applications

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 38¹.**
2. By way of derogation from paragraph 1, **visa applications** may, in exceptional cases², **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 States³ in the processing of visa applications⁴ referred to in paragraphs 1 and 2.**

¹ **BE** proposed to delete the reference to Art. 37 and 38 (e.g. cooperation with the ESP) because the ESPs are not allowed to intervene in the processing of applications. **COM** opposed that deletion. **DE** preferred the drafting of COM's proposal and was in favour of deleting the terms "without prejudiceand 38".

² **PL** proposed to align the drafting of this paragraph with that of Art. 32. **FR** proposed to delete the terms "in exceptional cases" and to refer to Art. 32 and 33.

³ **COM** proposed to delete the terms "visa issuing" and "recognised by Member States".

⁴ **COM** was of the opinion that the terms "in the processing of visa applications" should now be deleted given the new definition of "processing".