



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 23 May 2008

9183/08

**Interinstitutional File:
2006/0142 (COD)**

LIMITE

**VISA 168
CODEC 563
COMIX 362**

OUTCOME OF PROCEEDINGS

of: Visa Working Party/Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)

on: 29 and 30 April 2008

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 10 to 13 and Annexes III and IV on the basis of the proposal from the Commission (see 5588/08). The outcome of this examination is set out in the Annex to this note. The text of the proposal from the Commission modified by the Working Party appears in bold.

Chapter II
The application

Article 10

Practical modalities for submission of the application

1. Applications shall be submitted no more than three months before the start of the planned visit¹.
2. Applicants may be required to obtain an appointment for the submission of an application. (...). The appointment shall take place within two weeks².
3. In appropriately justified cases or in justified cases of **emergency**, applicants shall **either** be allowed to submit their application without a prior appointment or shall be given an appointment immediately.
4. (...) ³

¹ **FR** suggested the following addition: "or before the expiry date of a multiple entry visa with a long validity."

² A number of delegations (**DE, IT, NL, BE, ES, HU, SK, FI, CZ, FR, EL, LT, NO**) found this deadline too short, particularly at peak periods and wanted a more flexible wording along the lines of "whenever possible" or "within a reasonable deadline". **IT** suggested "within a reasonable period agreed on in the context of the local consular cooperation". **BE** was of the opinion that a distinction should be made in the procedure between applications submitted through consulates and those submitted through external service providers (ESP). **FR** entered a scrutiny reservation on the new wording proposed by the Presidency. **AT** entered a reservation on this paragraph because it was of the opinion that the legal basis of this provision (EC Treaty, Art.62(2)(b)(ii)) did not cover the period before the consulate had received the application. **COM** wanted to stick to its proposal because it concerned a general rule, even if ESP would intervene, and reminded delegations that the provision related to a deadline for the submission of the application, not for the issuing of the visa. Moreover COM emphasised that a wording like "within a reasonable time" is meaningless.

³ Moved to Art.12.

Article 11⁴

Capturing of biometric data

1. Member States shall collect biometric identifiers comprising the facial image and ten fingerprints from the applicant in accordance with the safeguards laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the United Nations Convention on the Rights of the Child.

At the **time** of submission of his/her first visa application each applicant shall be required to appear in person. At that time the following biometric identifiers shall be collected:

- (a) a photograph, scanned or taken at the time of application and
 - (b) ten fingerprints taken flat and digitally captured.
2. For any subsequent application the biometric identifiers shall be copied from the first application, provided the last entry is no older than 48 months. After this period a subsequent application is to be considered a "first application".
 3. The technical requirements for the photograph and the fingerprints shall be in accordance with the international standards as set out in ICAO document 9303 part 1 (passports) 6th edition⁵.

⁴ This Article was not examined as it is part of the Draft Regulation amending the Common Consular Instructions on visas for diplomatic and consular posts in relation to the introduction of biometrics, including provisions on the organisation of the receipt and processing of visa applications, currently under discussion (see 9153/08).

⁵ The technical requirements are the same as for passports issued by Member States to their nationals in accordance with Regulation (EC) No 2252/2004.

4. The biometric identifiers shall be **collected** by qualified and duly authorised staff of the diplomatic mission or consular post or, under their supervision, of the external service provider referred to in Article 37(c).

The data shall be entered in the Visa Information System (VIS) only by duly authorised consular staff in accordance with Articles 4(1), Article 5 and Article 6(5) and (6) of the VIS Regulation.

5. The following applicants shall be exempt from the requirement to give fingerprints:
- (a) Children under the age of 6;
 - (b) Persons **from whom it is physically impossible to take fingerprints**. If, however, fingerprinting of less than ten fingers is possible, the respective number of fingerprints shall be taken.

A Member State may provide for exceptions from the requirement to collect biometric identifiers for holders of diplomatic passports, service/official passports and special passports.

In each of these cases an entry "not applicable" shall be introduced in the VIS.

6. For each location, Member States shall either equip their consular office with the required material for capturing/collecting biometric identifiers or, without prejudice to the options of representation provided for in Article 7, decide to use one of the forms of cooperation described in Article 37.

Article 12

Submission of a visa application

- 1.⁶ When applying for a visa, the applicant shall:
- (a) **fill in and sign** the application form referred to in Article 13;

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FR proposed to redraft this paragraph along the following lines:

"When applying for a visa, the applicant shall:

- a) present a filled in and signed application form as referred to in Article 13;
- b) present a valid travel document the expiry date of which must, in principle, be at least three months after the intended departure from the territory of the Member State, and which contains two or more free pages for affixing the visa and entry/ exit stamps;
- c) allow the capture of his/her biometric data in accordance with Article 11(2);
- d) pay the administrative fees for the processing of his/her visa request, as provided in Article 16;
- e) provide evidence of the possession of sufficient means of subsistence, in accordance with Article 5(1)(c) of the Schengen Border's Code;
- f) provide documents proving his/her accommodation conditions, in accordance with Article 14 and Annex IV;
- g) present proof of possession of adequate travel medical insurance as provided for in Article 15;
- h) provide evidence of the possession of sufficient means in case of repatriation to his/her country of residence;
- i) present documents concerning his/her socio-economic situation."

DE and **AT** suggested that it be made clear to the applicant that the application would not be accepted if one of those conditions was not fulfilled, in order to distinguish between inadmissibility and the main procedure concerning the examination of the application. **BE** was of the opinion that the title of the article was incorrect as far as point (d) was concerned, since the evaluation of the means of subsistence did not relate to the submission of the application but rather to its examination. Moreover, **BE** found that it could create problems in practice in the case of **ESP** because **BE** believed that the **ESP** would intervene in the application process when refusing an application on the basis of the evaluation of those means, an intervention for which it is not competent. The **Chair** stressed the difficulty of find a common solution, given the different practices of the Member States and the difference between inadmissibility and incompleteness. Furthermore, the Chair was of the opinion that points (a) to (f) did not concern the conditions of admissibility of the application.

COM replied that inadmissibility did not mean refusal and that the applicant should be informed in future whether the visa had been refused for substantive reasons or because some document was missing. Furthermore, with regard to the comments made by **BE**, **COM** agreed that another title could be found for this article and that guidelines could be given to **ESP** concerning the documents that have to be accepted. **DE** noted that the general principle of the need for a personal interview with each applicant (as well as possible exemptions) should be stated explicitly in the Regulation. **DE** also found that restructuring of Articles 12,14,15,18 and 23 was called for in order to make a clear distinction between a) material requirements b) procedural requirements, and c) legal rights of appeal.

- (b) present a valid travel document the expiry date of which must, **in principle**, be at least three months after the intended departure from the territory of the Member States, and which contains one or more free pages for affixing the visa;
 - (c) provide supporting documents⁷, in accordance with Article 14 and Annex IV, proving the purpose and the duration of the stay;
 - (d) provide evidence of the possession of sufficient means of subsistence⁸, in accordance with Article 5(1)(c) of the Schengen Borders Code;
 - (e) allow⁹ the capturing of his/her biometric data in accordance with Article 11(2);
 - (f) pay the (...) fee as provided for in Article 16.
2. Where applicable, the applicant shall **produce** proof of possession of adequate travel medical insurance as provided for in Article 15. Member States' **consulates** may under local consular cooperation arrangements agree that this proof is to be **produced** only when the visa is issued¹⁰.
3. **If one or more of the items listed in paragraphs 1 and 2 is not submitted upon application, the applicant shall be invited to submit it/them within two weeks¹¹.**
4. **A stamp as provided for in Article 17 shall be affixed to the applicant's passport.**

⁷ **NL** suggested referring to local consular cooperation in order to decide which supporting documents would be needed for the persons concerned. **COM** replied that it was in favour of harmonisation but that Member States' practice was not harmonised locally.

⁸ **NL** proposed that there should be a definition of "means of subsistence".

⁹ **DE** entered a scrutiny reservation.

¹⁰ **BE** entered a reservation because it could not accept that the proof of travel medical insurance should be produced after the visa had been issued.

¹¹ **NL** was of the opinion that a distinction should be made between essential documents (i.e. passport) and additional documents and entered a scrutiny reservation on this paragraph. **DE** stressed the need to distinguish between the basic application and the supporting documents.

Article 13

The application form¹²

1. Visa applicants shall **submit a filled in** and signed application form, **as** set out in Annex III. Accompanying persons included in the applicant's travel document shall **fill in and sign** separate application forms. **In the case of minors this shall be done by the parental authority**¹³.
2. The **consulate** shall make the application form available to applicants free of charge and it shall be widely available and easily accessible in hard copy and electronic form.
3. The form shall be available in the following languages:
 - (a) the official language(s) of the Member State for which a visa is requested,
 - (b) the official language(s) of the host country, or
 - (c) the official language(s) of the host country and the official language(s) of the Member State for which a visa is requested.

¹² **DE** asked about the compatibility of the application form and the future VIS system and entered a scrutiny reservation on the information that can be retrieved from the form. **COM** replied that the VIS had been based on the current application form and that the VIS Regulation would be amended once this Regulation had been adopted.

¹³ The **Chair** indicated that this sentence would have to be redrafted since some delegations found it unclear (legal guardians included ?).

In addition to the languages referred to in the first subparagraph, the form may be made available in another of the official languages of the European Union.

If the form is available only in the official languages of the Member State for which a visa is requested, a translation of the application form into the official language(s) of the host country shall be made available to visa applicants, separately.

A translation of the application form into the official language(s) of the host country shall be produced under local consular cooperation arrangements.

4. Applicants shall be informed of the language(s) which may be used when filling in the application form.



Photo

ANNEX III: HARMONISED APPLICATION FORM

Application for Schengen Visa

This application form is free

Embassy or Consulate
Stamp

1. Surname(s) (family name(s))			Date of application :
2. Surname(s) at birth (earlier family name(s))			
3. First names (given names)			
4. Date of birth (...)	5. Place and country of birth	6. Nationality	Application submitted at ☐ embassy/consulate ☐ CAC ☐ travel agency
7. Sex ☐ Male ☐ Female		8. Marital status : ☐ Single ☐ Married ☐ Separated ☐ Divorced ☐ Widow(er) ☐ Other	Name:
9. Type of travel document: ☐ Ordinary passport ☐ Diplomatic passport ☐ Service passport ☐ Official passport ☐ Special passport ☐ Other travel document (please specify):			☐ service provider Name:
10. Number of travel document			Name:
11. Issued by Date of issue Valid until			
*11a. Applicant's address of residence and e-mail address			File handled by :
12. If you reside in a country other than your country of origin (...): ☐ No ☐ Yes. Residence permit or equivalent: Number Validity.....			☐ Invitation ☐ Means of transport ☐ Link with other application ☐ Other :
* 13. Current occupation			Visa : ☐ Refused ☐ Granted
* 14. Employer and employer's address and telephone number. For students, name and address of educational establishment.			☐ LTV ☐ A ☐ B ☐ C ☐ D
14a. Purpose(s) of travel Tourism Business Visit of family or friends Cultural Sports Official visit Medical reasons Study Other (please specify):			
15. Member State of main destination			
16. Number of entries requested ☐ Single entry ☐ Two entries ☐ Multiple entries		17. Duration of stay or transit Visa is requested for: ☐ short stay/transit, indicate number of days..... ☐ airport transit	Number of entries : ☐ 1 ☐ 2 ☐ Multiple
17a. Intended date of arrival		17b. Intended date of departure	
18. Previous Schengen visas (issued during the past three years) Were your fingerprints collected previously ? ☐ No ☐ Yes. Date			
19. Entry permit for the final country of destination (in the case of application for a transit or airport transit visa) Issued by: Valid until:			Valid from To

* The fields marked with * shall not be filled in by family members of EU or EEA citizens (spouse, child or dependent ascendant), while exercising their right to free movement. Family members of EU or EEA citizens shall present documents to prove this relationship and fill in field no 28.

20. (...)		(...)
21. (...)	22. (...)	
* 23. Full name of the host/sponsor in the Member States. If not applicable, give name of hotel or temporary address in the Member States		
Address (and e-mail address) of the host/sponsor	Telephone (and telefax)	
24. Name and address (and e-mail address) of host/sponsoring company/organisation	Telephone (and telefax) of company/organisation	
Name, address, Telephone (and telefax) (and e-mail address) of contact person in company/organisation:		
* 25. Cost of travelling and living during the applicant's stay is covered (...)		
☐ by the applicant himself /herself		☐ by a sponsor (host, company, organisation) ☐ referred to in field 23 or 24 ☐ other
Means of support ☐ Cash ☐ Traveller's cheques ☐ Credit cards ☐ Pre-paid accommodation ☐ Pre-paid transport ☐ Other		Means of support ☐ Cash ☐ Accommodation provided See proof of accommodation form No..... ☐ All expenses during the stay See proof of bearing of costs form No..... ☐ Pre-paid transport ☐ Other
26 (...)		
27 (...)		Travel and/or health insurance. ☐ Not applicable Name of insurance company No of policy: Valid until:
28. Personal data of the family member who is an EU or EEA citizen		
ID card number		
Name		First Name
Date of birth	Nationality	Number of passport
Family relationship with an EU or EEA citizen ☐ spouse ☐ child ☐ dependent ascendant		
29. (...)		
30. Place and date	31. Signature (for minors, signature of parental authority)	

Statement to be signed if a multiple entry visa is applied for (cf. field no 16)

(...) I am aware of the need to have adequate travel medical insurance **for my first stay** and for subsequent visits to the territory of Member States.

Signature

Statement to be signed by the applicant:

I am aware of and consent to the following: the **collection of the data required by this application form and the** taking of my photograph and, if applicable, the **taking** of fingerprints, are mandatory for the examination of the visa application. Any personal data concerning me which appear on the visa application form, as well as my fingerprints and my photograph will be supplied to the relevant authorities of the Member States and processed by those authorities, for the purposes of a decision on my visa application.

Such data as well as **data concerning** the decision taken on my application or a decision whether to **cancel**, revoke or extend a visa issued will be input into, and stored in the VIS for a **maximum** period of five years, **during which it will be** accessible to **the visa authorities and** the authorities competent for carrying out checks on visas at external borders and within the Member States, immigration and asylum authorities in the Member States for the purposes of **verifying** whether the conditions for the legal entry, stay and residence on the territory of the Member States are fulfilled, **of identifying persons who** do not or who no longer fulfil these conditions, of **examining an** asylum application and of **determining** responsibility for such examination. Under certain conditions the data will be also available to **designated** authorities (...) of the Member States **and to Europol for the purpose of the prevention, detection and investigation of terrorist offences and of other serious criminal offences**. The authority **of the Member State** responsible for processing the data is: *[the Ministry of the Interior/of Foreign Affairs of the MS concerned and contact details]*.

At my express request, the consular authority processing my application will inform me of the manner in which I may exercise my right to check the personal data concerning me and have them altered or deleted, in particular, should they be inaccurate, in accordance with the national law of the state concerned.

(...) I am aware that I have the right to obtain in any of the Member States **notification** of the data **relating** to me recorded in the VIS and of the Member State which transmitted **the data**, and to request that data relating to me which are inaccurate be corrected and that data recorded unlawfully be deleted. At my express request, the consular authority processing my application will inform me of the manner in which I may exercise my right to check the personal data concerning me and have them corrected or deleted, including the related remedies according to the national law of the State concerned. The national supervisory authority of **that** Member State *[contact details]* **will hear claims concerning the protection of personal data**.

I declare that to the best of my knowledge all particulars supplied by me are correct and complete. I am aware that any false statements will lead to my application being rejected or to the **cancellation** of a visa already granted and may also render me liable to prosecution under the law of the Member State which deals with the application.

I undertake to leave the territory of the Member States upon the expiry of the visa, if granted. I have been informed that possession of a visa is only one of the prerequisites for entry into the European territory of the Member States. The mere fact that a visa has been granted to me does not mean that I will be entitled to compensation if I fail to comply with the relevant provisions of Article 5(1) of the Schengen Borders' Code and am thus refused entry. The prerequisites for entry will be checked again on entry into the European territory of the Member States.

COMMENTS MADE ON ANNEX III:

Ad Title: **IT** suggested that the title be reformulated in this manner: "Application for a visa for a Schengen State" as the form should be used both for applications for Schengen visas and national visas.

Ad Fields 1-3: **FR** drew delegations' attention to the problems in relation to the filling in of these fields in countries where the Latin alphabet was not used, meaning that the entries in the application form did not correspond to what was in the passport, noting that it had to be ensured that the entries in the application form corresponded to the information contained in the applicant's travel document. **COM** stated that an asterisk could be inserted with a reference to that information. **HU** suggested adding a new box with a reference to the father's name.

Ad Field 4: after some discussion, the **Chair** concluded that the text in the box would simply refer to "Date of birth".

Ad Fields 10-11: indication of the request made by **FR** reintroduced.

Ad Field 12: **COM** agreed on the new wording proposed by the Presidency.

Ad Field 15: **HU** wished to add information on Member State of first entry.

Ad Field 20: moved to 14a.

Ad Fields 21 and 22: **BE** was of the opinion that the wording of those boxes was not clear enough. **COM** stated that instructions would be given to applicants in order to inform them correctly. Furthermore, the **Chair** concluded that those fields would be moved to immediately after 17.

Ad Field 23: **FR** found that this field should also be filled in by family members of EU citizens.

COM emphasised that this request went beyond purely operational concerns and that prior control of the right to free movement enjoyed by this category of persons was unacceptable and contrary to Directive 38/2004/EC, adding that family members of EU citizens could not be considered to present an illegal immigration risk, and therefore the * in relation to fields 23, 25 and 26 should remain.

Ad Field 29: moved to field 11a.

VERTICAL COLUMN: "For Embassy/Consulate use only":

ES proposed to delete the reference to visa D. **COM** agreed and indicated that the reference to any long-stay visas should be deleted. **LT, AT, NL, PT, BE, EE, EL** entered a reservation. The Chair concluded that there was support for using the form for visas D as well.

ANNEX IV: NON-EXHAUSTIVE LIST OF SUPPORTING DOCUMENTS

The supporting documents, referred to in Article 14, to be submitted by visa applicants may include the following:

A. DOCUMENTATION **RELATING** TO THE PURPOSE OF THE JOURNEY

- (1) for business trips:
 - (i) an invitation from a firm or an authority to attend meetings, conferences or events connected with trade, industry or work;
 - (ii) other documents which show the existence of trade relations or relations for work purposes;
 - (iii) entry tickets for fairs and congresses, if appropriate;
 - (iv) documents proving the business activities of the company;
 - (v) documents proving the applicant's employment [status][situation] in the company.
- (2) for journeys undertaken for the purposes of study or other types of training:
 - (i) a certificate of enrolment at a teaching institute for the purposes of attending vocational or theoretical courses in the framework of basic and further training;
 - (ii) student card or certificates for the courses attended;
- (3) for journeys undertaken for the purposes of tourism or for private reasons:
 - (i) documents **relating to** lodging:
 - an invitation from the host if staying with one;
 - a document from the establishment providing lodging or any other appropriate document indicating the accommodation envisaged;
 - (ii) documents **relating to** the itinerary:
 - confirmation of the booking of an organised trip or any other appropriate document indicating (...) travel plans;
 - **in the case of transit: visa or other entry permit for third country of destination; tickets for onward journey;**
- (4) for journeys undertaken for political, scientific, cultural, sports or religious events or other reasons:
 - invitations, entry tickets, enrolments or programmes stating wherever possible the name of the host organisation and the length of stay or any other appropriate document indicating the purpose of the visit.

B. DOCUMENTATION ALLOWING FOR THE ASSESSMENT OF THE APPLICANT'S INTENTION **TO RETURN**

- 1) return or round ticket;
- 2) proof of financial means;
- 3) proof of employment: bank statements;
- 4) proof of real estate property;
- 5) proof of integration into the country of residence: family ties; professional status.

C. DOCUMENTATION IN RELATION TO THE APPLICANT'S FAMILY SITUATION

- 1) parental consent (when **a** minor does not travel with parents);
 - 2) proof of family ties with **the host**;
 - 3) **proof of family ties with the EU citizen.**
-