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NOTE

From:	German delegation
To:	Visa Working Party/Mixed Committee (EU-Iceland/Norway and Switzerland/Liechtenstein)
No. prev. doc.:	8664/18
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code) - Article 32

Germany takes note of the remarks of several Member States during the Visa Working Party on 18 May 2018 that the proposed amendment to Article 32 Visa Code would need to have a simpler wording.

Therefore, Germany proposes a revised amendment to the draft Article 32 of the Visa Code to ensure an effective prevention of security threats.

Recent ECJ decisions will lead to a more detailed judicial control of security concerns pursuant to Article 32(1)(a)(vi) Visa Code. Therefore we expect that the Member State that raises the concerns will have to provide the necessary information on security concerns to the Member State that has to guarantee the effective judicial appeal. Otherwise the Member State which pleads the case in court either might be obliged by the courts to issue a uniform Schengen visa despite security concerns raised by others or might be under the compulsion to issue a VTL.

Germany proposes to include a new Article 32(4) to the Visa Code:

“4. Each Member State designates a competent authority for security concerns pursuant to paragraph 1 (a)(vi) and communicates the details of that authority to the Commission. That authority shall act as a contact point for information about the security concerns to the Member State that takes the final decision on the application including in the case of a judicial appeal pursuant to paragraph 3. The Member State that takes the final decision on the application may in the case of a judicial appeal pursuant to paragraph 3 indicate to the applicant the contact details of that authority upon its prior consent. In the case of sentence 3 without prejudice to the admissibility of the judicial appeal pursuant to paragraph 3 the Member State that raised the security concerns provides an effective judicial appeal regarding the security concerns to the applicant in accordance with the national law of that Member State.”

According to that amendment, the Member States shall have two options to deal with a judicial review in cases of security concerns:

First, the Member State that takes the final decision on the application will guarantee the effective judicial appeal described in Article 32(3) Visa Code. If a court demands detailed information about the security concerns raised, the competent authorities of the Member State that raised the security concerns shall act as a contact point to provide the necessary information to the Member State that takes the final decision on the application for the judicial appeal.

Second, the Member State that takes the final decision may indicate to the applicant the contact details of that authority upon its prior consent. This option falls in line with the initial suggestion of the COM to indicate the Member State that raised the security concerns to the applicant while limiting it to strict conditions. Without prejudice to the admissibility of the judicial appeal pursuant to paragraph 3 the Member State that raised the security concerns may in that case guarantee a procedure of withdrawal of the security concerns including an effective judicial appeal in accordance with its national law.