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Subject: Visa Package
- Draft Regulation of the European Parliament and of the Council on the Union Code on visas (Visa Code) (recast)
- Draft Regulation of the European Parliament and of the Council establishing a touring visa

I. State of play

On 2 April 2014, the Commission submitted the "Visa Package" which contains the proposal for the recast of the Regulation on the Union Code on Visas¹ (hereinafter referred to as the Visa Code) and the proposal for a Regulation aiming at establishing a touring visa².

¹ Draft Regulation of the European Parliament and of the Council amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code) (see 8401/14).

² Draft Regulation of the European Parliament and of the Council establishing a touring visa and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 562/2006 and (EC) No 767/2008 (see 8406/14).

The draft Regulation recasting the **Visa Code** takes into account the increased political emphasis given to the positive impact of the visa policy on the wider European Union economy and, in particular, on tourism. Its aim is to ensure greater coherence with the growth objectives of the Europe 2020 strategy and contribute to generating economic growth while preserving coherence with other Union policies, such as external relations, trade, education, culture and tourism.

In order to achieve this, the proposal puts forth an array of amendments which facilitate travel opportunities for legitimate travellers and simplify the legal framework in the interest of Member States. It also establishes new categories of visa applicants who would benefit from these procedural facilitations. Some procedural facilitations apply to all applicants whereas others only apply to certain categories of beneficiaries: "VIS registered applicants", "VIS registered regular travellers" as well as "close relatives" of Union citizens.

As regards the draft Regulation on **touring visa**, it establishes a new type of visa called 'touring visa'. It aims at filling a legal gap by introducing a new authorisation for persons who have a legitimate interest or need to stay longer than 90 days in the Schengen area, but not long enough in any Member State to take up residence there. It would therefore provide a solution for certain categories of persons who have such legitimate interest or need such as live performers, sportspersons and their crews who tour from one Member State to another. The length of authorised stay within the Schengen area would go up to one year, with the possibility of extension for another year, but would be limited to 90 days in any 180-day period for each Member State. The future EU-wide Entry-Exist System (EES) could be important for this proposal as it will allow the calculation of the authorised length of stay of all third-country nationals.

As regards proceedings in the European Parliament, Mr López Aguilar (LIBE, S&D) is the Rapporteur for the proposal on the recast of the Visa Code while Mr Brice HORTEFEUX (LIBE, EPP) has been appointed Rapporteur for the proposal aiming at establishing a touring visa. The draft reports were presented in the LIBE Committee on 14 September. The vote of the amendments on both proposals are likely to be held on 13 October 2015.

As regards proceedings in the Council, the Visa Working Party started the first reading of the proposal in June 2014. The discussions have focused on a set of facilitations considered particularly problematic and for which appropriate solutions need to be identified. The Council's main concern is, in fact, to find the appropriate balance between fostering economic growth via tourism within the European Union while at the same time preventing irregular immigration and security risks. In this context, there are several outstanding issues, which are perceived as sensitive and for which political guidance from Ministers would help significantly to advance the discussions.

II. Outstanding issues

Therefore, the Presidency invites Ministers to comment on the following issues:

1) The mandatory issuing of a multiple entry visa (MEV) valid for three or five years to VIS registered regular travellers (Art. 21(3) and (4))

According to the Commission's proposal, consulates shall issue an MEV valid for three years to VIS registered regular travellers who have lawfully used the two previously obtained visas. VIS registered regular travellers who have lawfully used the MEV valid for three years shall be issued a MEV valid for five years provided that the application is lodged no later than one year from the expiry date of the MEV valid for three years.

The vast majority of delegations disagree with the proposal that, if all the conditions are met, the consulates have no other option than to issue an MEV (i.e. issuance of a MEV or no visa at all), without any flexibility as regards the duration of validity of the MEVs, and even when the applicant has not asked for it. Some have argued for introducing the possibility to tailor the duration of the MEVs to the specific needs and requirements of the applicant and to issue a visa with a shorter validity period.

The Commission, on the other hand, emphasises that its approach would lead to harmonised practices and prevent visa shopping. The Commission also argues that it could alleviate the work burden of the consulates since they would have less applications to examine. It also recalls that it would serve the economic objective of the recast proposal, because those bona fide travellers would be able to travel more often to the EU for leisure or business.

In the light of these considerations, the Presidency would like to invite Ministers to express their point of view on the following questions:

- Should the issuance of the MEVs be compulsory regarding VIS registered travellers meeting the required conditions ?
- Should it be possible for consulates to determine the duration of validity of the MEV for a shorter period than the 3 or 5 years proposed by the Commission ?

2) The deletion of the current Article 15 of the Visa Code providing for a travel medical insurance (TMI)

In its proposal, the Commission has proposed the deletion of the requirement for visa applicants to prove the possession of adequate and valid TMI because it considers that the actual added value of the TMI measure has never been established.

The vast majority of delegations have strongly opposed this amendment and asked for the reinsertion of the provision. Due to the reported existence of important outstanding hospital debts for health care provided to "foreigners", delegations call for an improvement of the current system rather than its abolishment.

In the light of the above, the Presidency suggests the reintroduction of the article regarding the TMI and invites Ministers to submit ideas on how to improve the system for the sake of preventing abuse.

Can Ministers agree with that suggestion?

3) The scope of the definition of “close relatives” of Union citizens (Art. 2(7))

The Commission has proposed provisions to facilitate family visits of close relatives of Union citizens residing in the territory of the Member State of which they are nationals and of close relatives of Union citizens residing in a third country and wishing to visit together the Member State of which the Union citizen has the nationality. It should be noted that some recently concluded Visa Facilitation agreements already provide for that possibility. The close relatives of Union citizens are among the new categories of applicants who would be entitled to a significant range of procedural facilitations. The term “close relatives” includes the spouse, children, parents, persons exercising parental authority, grandparents and grandchildren.

Many delegations have expressed their concern or disagreement with the creation of this new category of applicants for the main reason that the definition covers too many people and goes beyond what is provided in Directive 2004/38/EC¹. The Directive lays down, on the one hand, the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members and, on the other hand, the right of permanent residence in the territory of the Member States for Union citizens and their family members. The Directive defines family members as: (i) the spouse, (ii) the partner with whom the Union citizen has contracted a registered partnership, (iii) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner, and, finally (iv) the dependent direct relatives in the ascending line and those of the spouse or partner. While the procedural facilitations for family members provided in the proposal mirror the facilitations already enshrined in Directive 2004/38/EC, the facilitations foreseen for ‘close relatives’ are wider in the Commission proposal.

Considering the above, the Presidency would like to invite Ministers to express their point of view on the following question:

Should the proposal include and provide for procedural facilitations for “close relatives” of Union citizens? Or should the scope of the proposal be limited to "family members" as defined already in Directive 2004/38/EC ?

4) The issuing of visas at the external border under a temporary scheme (Art. 33)

Currently, Member States are authorised to issue visas at the external border only on a case-by-case basis depending on the third-country nationals’ individual situation.

Many delegates believe that the possibility for a Member State to temporarily issue at the external border visas valid for the territory of the issuing Member State and entitling the holder to stay for a maximum duration of 15 days will not only have a detrimental impact on existing infrastructures of some Member States but also increase security risks and turn the external borders concerned into weak entry points to the Schengen area.

¹ Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States .

In the light of these considerations, the Presidency suggests removing this Article.

Can Ministers agree with that suggestion ?

5) The scope of the touring visa (T-visa) proposal

The Visa Working Party started the first examination for the proposal in January 2015. The proposal implies that in principle any third-country national may apply for a T-visa if he/she can provide appropriate proof that he/she intends to stay in the territory of two or more Member States for longer than 90 days without staying for more than 90 days in the territory of any of these Member States.

A significant number of delegations have expressed strong concerns regarding the scope of the beneficiaries of the T-visa and the difficulty to control movements of travellers resulting from the absence of border controls within the Schengen area. It has therefore been suggested to narrow down the personal scope of the proposal to the specified categories of applicants who have legitimate interest or need to travel around in the Schengen area for more than 90 days.

The Presidency would thus like to invite Ministers to express their point of view on the following question:

In view of narrowing the scope of the proposal aiming at establishing a T-visa, which are the categories of applicants who should benefit from the introduction of the proposed T-visa?

III. Conclusion

The Permanent Representatives Committee/Council is invited to examine the above issues with a view to the further proceedings in the Council preparatory bodies.
