



Council of the
European Union

Brussels, 11 May 2017
(OR. en)

9050/17

**Interinstitutional File:
2016/0357 (COD)**

LIMITE

**VISA 164
FRONT 206
DAPIX 176
DATAPROTECT 93
CODEC 782
COMIX 335**

NOTE

From: Czech and Belgian Delegations
To: Visa Working Party/ Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)
Subject: Proposal for a Regulation establishing a European Travel Information and
Authorization System (ETIAS)

Delegations will find in the ANNEX the non paper prepared by the Czech and Belgian delegations on the above mentioned subject in order to be discussed under AOB during the Visa Working Party on 12 May 2017.

The CZ and BE delegations request to draw the attention of the visa experts to the ongoing negotiations in the Frontiers Working Party on the European Travel Information and Authorization System (ETIAS), in particular draft article 2.

This article, dealing with the scope of ETIAS, contains many references to both regulation 539/2001 and the Visa Code (via the reference to airport transit visa requirement), which is the core business of the Visa WP. The determination of the scope and the interaction with the visa requirement is obviously of utmost importance, as overlapping requirements or legal loopholes should be avoided. However, due to the highly technical and complicated nature of regulation 539/2001, we haven't been able yet to discuss these issues in depth in the Frontiers WP.

In our opinion, there are still many outstanding legal and technical questions, which include the following:

- national exceptions to the (exemption to the) visa requirement on the basis of article 4 regulation 539/2001:
 - o in case a person wishes to travel only to a MS without visa requirement, will the travel authorisation (TA) have only limited territorial validity (LTV), e.g. valid for Schengen minus the MS with visa requirement?
 - o in case a person wishes to travel to a MS without visa obligation and a MS with visa obligation, should he be in possession of both a visa and a TA?
 - if so, should this visa be a LTV visa?
 - if not, who will be the responsible MS to issue the (uniform) Schengen visa? This is currently dealt with in the visa handbook volume I, part II, 2.5, which mentions the MS with a visa requirement is always responsible. Will this still apply with ETIAS into force?

- implications of ETIAS for airport transit, in particular the criteria that should be examined in this regard and the interaction with the visa C for a possible subsequent request at the border to enter the territory.
- added value of 5 different categories outside the scope of ETIAS in 2(2), (a), (b), (c), (d) and (e), which basically all relate to having long term residence in a MS. This could likely be simplified somehow in order to ascertain legal clarity.
- thorough consideration whether all the categories of travellers mentioned in 2(2)(h) of ETIAS should lie in- or outside the scope of ETIAS – in particular sensitive issue of holders of diplomatic passports which also has foreign relations implications.
- ETIAS for members of the family of a EU-citizen (without a residence permit): to examine whether the current conditions or even the ETIAS-requirement in its whole is in line with directive 2004/38. See in particular MRAX-ruling of Court of Justice C-459/99 of 22/7/2002, which states that they should always have the possibility to apply for a visa at the border in order to enter the territory. This could possibly apply mutatis mutandis to a possible TA-requirement.

Furthermore, in the whole ETIAS proposal the principle should be followed that the visa-exempt travelers are not subject of a less favorable treatment than those required to hold a visa (see also explanatory memorandum: "...the need to put in place a system that is able to achieve objectives similar to the visa regime, namely to assess and manage the potential irregular migration and security risks represented by third country nationals visiting the EU, yet in a lighter and more visitor-friendly way, in line with the objectives of the EU's visa liberalisation policy"). Once the ETIAS proposal is adopted, the Visa Code might need to be revised accordingly.