



Council of the
European Union

015059/EU XXVI. GP
Eingelangt am 15/03/18

Brussels, 14 March 2018
(OR. en)

7172/18

VISA 50
MIGR 38
FRONT 63
COMIX 132

COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 14 March 2018

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: COM(2018) 251 final

Subject: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL Adapting the common visa policy to
new challenges

Delegations will find attached document COM(2018) 251 final.

Encl.: COM(2018) 251 final



Brussels, 14.3.2018
COM(2018) 251 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

Adapting the common visa policy to new challenges

1. INTRODUCTION

The EU common visa policy¹ is an essential part of the Schengen *acquis* and one of the most valued achievements of EU integration. Visa policy is, and should remain, a tool to facilitate tourism and business, while preventing security risks and the risk of irregular migration to the EU.

While the fundamental principles of visa processing have not been reviewed since the entry into force of the Visa Code² in 2010 and the Visa Information System³ in 2011, the environment in which visa policy operates has drastically changed. The migration and security challenges faced in recent years have shifted the political debate about the area without internal border control in general, and about visa policy in particular, towards a reassessment of the balance between migration and security concerns, economic considerations and general external relations.

At the same time, significant technological developments are providing new opportunities to make visa processing easier for both applicants and consulates. The importance of visa policy in the EU's external relations has grown over the years.

For all these reasons it is time to look again at the common visa policy by adapting it to today's challenges and opportunities while ensuring it achieves its two main objectives of facilitating legitimate travel and tackling irregular migration and security threats .

In 2014 the Commission proposed a recast of the Visa Code⁴, mainly to further facilitate travel for legitimate travellers. However, the negotiations did not make progress due to diverging positions taken by Parliament and the Council. Meanwhile, the increased security and migratory challenges rendered some aspects of the recast proposal outdated. The Commission therefore decided to withdraw the recast proposal and present a new targeted proposal amending the Visa Code.

The new proposal amending the Visa Code, which is presented today together with this Communication, is intended to update the visa procedures to better respond to the changed migratory and security situation, including by a joined up approach between visa policy and readmission cooperation. It will also address a number of deficiencies in the current rules to make it easier for legitimate travellers to obtain a visa to travel to the EU. The new proposal also carries over some useful aspects of the withdrawn proposal on recasting the Visa Code. These include provisions giving more flexibility for applicants to apply for a visa and better organisation of the work of consulates.

Besides presenting the main aspects of the proposal to amend the Visa Code, this Communication also sets out objectives to be addressed in the amendments to the Visa

¹ The common visa policy is a set of harmonised rules governing different aspects: (i) the common 'visa lists' of countries whose nationals require a visa to travel to the EU and those who are exempt from that requirement; (ii) the Visa Code establishing the procedures and conditions for issuing short-stay visas; (iii) the uniform format for the visa sticker; and (iv) the Visa Information System (VIS), in which all visa applications and Member States' decisions are recorded, including applicants' personal data, photographs and fingerprints.

² Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), OJ L 243, 15.9.2009, p. 1.

³ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 (VIS Regulation), OJ L 218, 13.8.2008, p. 60.

⁴ COM(2014) 164 of 1.4.2014.

Information System, which will be presented later in the spring once the ongoing technical studies and impact assessment have been completed.

Together with the new systems for security, borders and migration management, such as the recently adopted Entry/Exit System (EES)⁵, which inter alia allows for better checks on respect for visa conditions, and the European Travel Information Authorisation System (ETIAS)⁶ proposed by the Commission, the foundations are being laid for a visa policy which is better equipped to respond to security and migration challenges. This will be further enhanced by the interoperability proposal⁷ to improve the ability of EU information systems in the area of borders, security and migration management to exchange data and share information.

Finally, the Communication looks ahead by examining how to ensure better synergies between EU visa policy and EU external relations and by launching a debate on the digitalisation of visa processing.

2. OVERALL OBJECTIVES

The proposal presented today amends several provisions of the Visa Code. The overall aim of these amendments is to strengthen visa policy so that it becomes a more effective tool to respond to the heightened migratory and security challenges faced by the EU. The proposal will also ensure that it becomes easier to process visas for legitimate travellers who contribute to the growth of the EU economy or to the EU's social and cultural development.

As for the overall objective of addressing the migratory challenges, this will be achieved through a new approach that brings together visa policy and readmission cooperation with third countries (see Section 3.1). Mandatory rules for the issuing of multiple-entry visas can also contribute indirectly to this objective (see Section 3.3).

The security of visa processing will be enhanced, notably by revising the Visa Information System (VIS), which will be presented later in the spring (see Chapter 4). The proposal on revising the VIS will also aim to make full use of the interoperability approach. Interoperability is of key importance to further improve the data available to consular officers when assessing a visa application. This in turn will make it easier for them to identify individuals who might pose a security or irregular migration risk and to whom a visa should be refused. By the same token, it will make it easier to identify bona fide travellers for whom visa procedures could be facilitated.

3. AMENDING THE VISA CODE

3.1. Joining up visa and return policies

In recent years, the Visa Code objectives of preventing irregular migration and security risks have come into much sharper focus. A key pull factor for irregular migration flows to the EU is the fact that Member States have great difficulty in returning apprehended irregular migrants to their countries of origin due to the lack of cooperation by the authorities in those countries when it comes to complying with readmission requests from Member States.

⁵ The EES was established by Regulation (EU) 2017/2266 of the European Parliament and the Council adopted on 30.11.2017.

⁶ COM(2016) 731 of 16.11.2016.

⁷ COM(2017) 793 of 12.12.2017.

In this context, visa policy has been called upon to play a more effective role in the EU's cooperation with third countries, specifically on migration management, having also in mind that a certain part of the irregular migrants to be returned had entered the EU legally by obtaining visas which they overstayed. Accordingly, the European Council of June 2017 called for 'reassessing visa policy towards third countries, as needed' as a means of achieving real progress in return and readmission policy.

Against this background, the Commission is proposing a framework to establish stricter conditions for processing visas in cases where a third country does not cooperate satisfactorily on readmission. In this context, the EU's overall relations with the third country concerned will also be taken into account.

3.2. Review of the visa fee

The standard visa fee has not been revised since 2006. The Commission is proposing an increase of the fee in order to contribute to the efficient processing of the increasing number of visa applications and to allow Member States to maintain adequate levels of consular staff so that the applications can be processed faster⁸. Increasing the fee is justified in order to cover costs for staffing (both expatriate and locally hired staff), premises, equipment, staff training and IT systems development and maintenance.

Increasing the visa fee is also necessary to: (i) improve the efficiency of visa processing in terms of detecting security and irregular migration risks; (ii) further upgrade Member States' IT equipment and software; and (iii) provide fast and client-friendly procedures to visa applicants. It would also contribute to maintaining wide consular coverage across the world. In this context, the Commission proposes also a more flexible process for reviewing the visa fee in the future.

The increase of the common visa fee proposed by the Commission, however, is moderate, so as to lead to a sound increase of revenues for Member States to support the integrity of visa processing and security, without being a deterrent for the overwhelming majority of visa applicants.

3.3. Introducing a harmonised approach to issuing multiple-entry visas with long validity

Multiple-entry visas allow their holders to travel repeatedly to the EU during the visa's period of validity. These frequent visits contribute positively to the EU's economy and growth, people-to-people contacts and cultural exchanges. The current rules on multiple-entry visas, however, give Member States' consulates a large margin of discretion when issuing them. This can lead to competition among Member States in attractive (tourist) markets, to bilateral agreements or arrangements with third countries and to 'visa shopping'. These practices undermine the basic principles of a common visa policy and are not conducive for trade and the economy. One reason for this is that trusted and regularly travelling businesspeople could end up having to apply for a visa each and every time they need to travel. In addition, the uncertainty that applicants face when submitting an application for a multiple-entry visa can work as an incentive for them to tamper with their application. The Commission therefore proposes mandatory rules for the issuing of multiple-entry visas that would allow applicants with a positive visa history to be issued multiple-entry visas with increasing length of validity from 1 year up to a maximum of 5 years when they apply for subsequent visas.

⁸ The total number of visas applied for rose from 10.2 million in 2009 to 15.2 million in 2016.

3.4. More streamlined visa procedures and facilitating short-term tourism

One general objective of visa policy, namely facilitating travel for legitimate travellers, should also be addressed. On this issue, the Commission proposes to retain a number of proposals from the Visa Code recast intended to simplify the visa application procedures. These include the possibility of applying for a visa longer in advance, electronic completion and signature of the visa application form and shorter deadlines for deciding on an application.

The Commission also proposes introducing some flexibility for bona fide applicants in order to promote short tourism trips and spur economic growth in the EU. This would include allowing Member States to issue single-entry visas at the external border under a special scheme on a temporary basis and under strict conditions. Visas issued under this scheme would be valid only for the issuing Member State for one entry and for a stay of a maximum 7 days.

4. TOWARDS ENHANCED SECURITY BY REVISING THE VISA INFORMATION SYSTEM AND MAKING FULL USE OF INTEROPERABILITY

Another important component of the framework underpinning visa policy is the Visa Information System (VIS). Since 2011, the VIS⁹ has served as the technology solution facilitating the visa procedure and helps Member States' authorities to: (i) check rapidly and effectively the necessary information about third-country nationals who need a visa to travel to the EU; and (ii) make decisions on visa applications. The Entry Exit System (EES), that will be operational as of 2020 and is conceived as being fully interoperable with the VIS, will enhance the functioning of the VIS by providing information on the use made by third-country nationals of their visas, and will help to establish the bona fide status of visa holders who already visited the Schengen area.

The VIS was also part of a broader process of reflection on the interoperability of information systems. This process led to the interoperability proposal to make EU IT systems in the area of security, border and migration management work together in a smarter and more efficient way. At the core of interoperability sits a single EES-ETIAS-VIS platform that will provide a major step forward in data collection and exchange of information for visas, security, and border and migration management. A single search platform (the European Search Portal) will make it possible to carry out a single search and receive results from different systems. This in turn will facilitate more efficient background checks on visa applicants, thus contributing to increasing security in the area without internal border control. In that context, the upcoming revision of the VIS legal framework¹⁰ to be presented in spring will include specific interoperability measures to increase the efficiency of visa processing (see Section 4.1). The proposal is also likely to address other issues identified in the evaluation of VIS carried out in 2016 (see Sections 4.2 and 4.3). The preparatory work for the VIS proposal, including technical studies and an impact assessment, which will also analyse the impact on fundamental rights, is ongoing.

⁹ By January 2018, over 52 million visa applications and nearly 45 million fingerprints had been registered in the VIS.

¹⁰ The revision will concern the following legal acts: Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (*VIS founding Decision*), Council Decision 2008/633/JHA of 23 June 2008 (*VIS Law Enforcement Access Decision*), Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 (*VIS Regulation*) and the Visa Code.

4.1. Enhancing checks in visa processing using interoperability

Under the existing rules, consulates are only obliged to check travellers under a visa obligation in the Schengen Information System (SIS) to determine whether a visa applicant is subject to an entry ban. There is currently no obligation to check visa applicants against any other available EU databases (e.g. EURODAC), or against Interpol's Stolen and Lost Travel Documents database and Travel Documents Associated with Notices database¹¹. Once ETIAS is in place, visa-free travellers to the EU will have to undergo background checks in all relevant EU databases.

Therefore, to better prevent security and migratory risks and while respecting the principle of necessity and proportionality of EU action, the Commission will analyse whether the rules on visa processing should be amended to ensure at least comparable background verification of visa-required and visa-free travellers.

Once in place, the European Search Portal will allow competent authorities — including visa issuing authorities — to carry out a single search and receive results from all systems they are authorised to access (including EURODAC, EES and the European Criminal Records Information System — Third Country Nationals) rather than searching in each system individually. The European Search Portal will contribute to the detection of security and irregular migration risks in the visa procedure by enabling visa officers to perform quick and efficient background checks on visa applicants.

The interoperability proposal also aims to make it easier to detect multiple identities and counter identity fraud. Using this interoperability feature, the visa authority processing an application will be notified automatically if the applicant is known under different identities and will be able to take the appropriate course of action.

4.2. Closing remaining information gaps for borders and security: include long-stay visas and residence documents in the VIS

The Final Report of the High-level expert group¹² identified an information gap at EU level concerning the documents that allow third-country nationals to stay on the territory of a given EU Member State for longer than 90 days in any 180 days¹³. Today, data on these documents and their holders are not collected and the data cannot be verified through any of the EU large-scale IT systems in the area of border and security (except SIS, to a limited extent). Member States consider that the current management of these documents leads to shortcomings in the facilitation of border crossing of third country nationals and their subsequent free movement in the area without internal border control. Member States have thus requested the Commission to assess whether a central EU repository of information on long-stay visas and residence visas is necessary, feasible and proportional to address the existing information gap regarding these categories of third country nationals.¹⁴

¹¹ Interpol's Stolen and Lost Travel Documents database (SLTD) and the Travel Documents Associated with Notices (TDAWN) database contain information on travel documents linked to individuals who are subject to an Interpol notice.

¹² The High-level expert group was set up by the Commission in June 2017 as an advisory body to improve the EU's data management architecture for border control and security. Its final report was adopted on 11 May 2017.

¹³ E.g. long-stay visas and residence documents (including both residence permits and residence cards).

¹⁴ Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area, endorsed by the Council on 9 June 2016.

A technical study into the feasibility of establishing a central EU repository of information on long-stay visas and residence documents was finalised in September 2017. The study concluded that a repository as part of the VIS would provide the most feasible solution in terms of IT security, ease of implementation and cost effectiveness.

4.3. Addressing remaining information gaps in short-stay visa processing: lowering the fingerprinting age of applicants and storing copies of travel documents in the VIS

The Commission is also assessing the following issues:

- The possibility to lower the fingerprinting age for children for whom a visa is required, and storing the fingerprints in the VIS. This would better protect children and fight against trafficking and irregular migration while keeping the child's best interests at the forefront.
- The possibility to store in the VIS copies of travel documents submitted by visa applicants during the visa procedure. This would make it possible to run enhanced checks of these documents and increase the efficiency of return procedures. This measure would support the EU's return policy, but would rely on the VIS for its implementation.

5. STRENGTHENING COHERENCE BETWEEN EU VISA POLICY AND OTHER POLICIES

The EU common visa policy is an increasingly important component of the EU's external relations in a globalised world. Obtaining or maintaining visa-free travel to the EU for their citizens is for many partner countries a key political priority in their relations with the EU.

The coherence between visa policy and commitments made in other policy areas, notably trade agreements, should be looked at, as well as coherence between the common visa policy and bilateral visa waiver agreements concluded by Member States with certain third countries.

The new generation of EU trade agreements currently being negotiated typically include the services sector, allowing individuals to invest and provide services on the other party's territory. Regarding the temporary presence of such people on the Member States' territory, the preliminary analysis in the Commission's fitness check on the Legal Migration Directives confirms that some of the categories of service providers covered in the trade agreements (e.g. service providers that are allowed stays up to 6 months in every 12 months) are not covered either by the Visa Code or by the existing legislation on legal migration. The Commission will analyse how to strengthen synergies between, on the one hand, commitments made in trade agreements, and on the other hand, the EU's visa policy and legal migration policies with regard to these categories of service providers.

In addition, further analysis is needed of the bilateral visa waiver agreements concluded by Member States with certain third countries prior to the entry into force in 1999 of the Treaty of Amsterdam when visa policy became a common policy. These bilateral agreements are still in force because the Member States and the third countries concerned attach great value to them, mainly for historical and political reasons. Yet not only should such bilateral agreements have no place in a truly common policy, they also structurally do not fit as the third country nationals covered by these agreements could extend their stay in the area

without internal border control almost indefinitely.¹⁵ The EES Regulation provides that an assessment will be made of these agreements 3 years after the Entry/Exit System enters into operation. In this context, the Commission will launch a reflection on what form and scope a future EU instrument to replace them could take, including by studying options for visa-free stays longer than 90 days in the area without internal borders for nationals of certain selected third countries.

The suspension mechanism allowing temporary suspension of the exemption from the visa requirement for nationals of a third country listed in Annex II to Regulation (EC) No 539/2001¹⁶ has been recently revised. In parallel, the development of new information systems for border and migration management such as EES and ETIAS, and the interoperability between relevant databases, will also contribute to reducing irregular migration and security risks. In the light of this, the Commission considers that any future proposals to transfer a third country to Annex II must be assessed in particular in the light of irregular migration risks and security threats. If necessary, such proposals must be made conditional, on a case-by-case basis, on the third countries concerned having already implemented certain measures such as issuing biometric passports or concluding a readmission agreement. Such measures would be identified in line with the criteria set by Regulation (EC) 539/2001¹⁷.

6. TOWARDS DIGITAL VISAS¹⁸

The Commission intends to launch a debate that will prepare the way for reflection on whether it should move towards digital visas.

Despite major technological advances since the Visa Code was adopted, visa applications are still largely processed using procedures pre-dating the digital revolution. While the current visa process is already partly electronic, as applications and decisions are registered in VIS, two important steps remain paper-based, namely submitting the visa application with the required supporting documents and the actual issuing of the visa sticker. These are the two steps in which applicants are most directly involved, as they have to present themselves at the consulate/external service provider: (i) when submitting the application and, for first-time applicants, having their fingerprints taken; and (ii) when they collect the travel document at the end of the process. Several countries (e.g. the US, Australia, Turkey) have already started moving towards e-visa programmes and some Member States have also launched (partial) electronic visa application procedures.

In the second half of 2017, discussions on digitalising visa processing began with Member States in the Council with a view to further enhancing and facilitating current visa processing practices¹⁹. The discussions focused on two concrete possibilities: (i) replacing the physical visa sticker by a 'digital visa'; (ii) replacing the current paper-based application by an online application procedure.

¹⁵ For example, there is at least one third country which has 16 bilateral visa waiver agreements with Schengen countries, which enable their nationals, in theory at least, to legally stay in the area without internal border control up to 51 months (16x3 + 1x3).

¹⁶ Council Regulation (EC) No 539/2001 of 15 March 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 requirement', OJ L 81, 21.3.2001, p. 1.

¹⁷ The Commission is also adopting today a proposal to codify this Regulation. This codification is being proposed to improve the accessibility and transparency of this legislation without changing its substantive rules in line with standard codification practice.

¹⁸ In this paper, the term 'digital visas' includes both digital visas and online application.

¹⁹ See I/A Item note 14616/17 of 23.11.2017 for summary report.

Most Member States are interested in the use of digital visas. Lower costs for consulates and having a speedier, more efficient and client-friendly application process were among the potential advantages they cited. There was, however, also understanding that many aspects would require further in-depth assessment and studies and that priority should be given to developing and implementing EES, ETIAS and the interoperability proposals.

The Commission also believes that digital visas are the way forward for the longer term and will therefore launch feasibility studies by end-2018. In this light, the Commission considers it necessary to launch the debate with stakeholders on how technological developments can be exploited to further streamline and simplify visa processing for the benefit of applicants and consulates. This debate will involve assessing options and promoting pilot projects, which would prepare the ground for future proposals. In this context, the results of the pilot projects that some Member States are already implementing can feed into the political debate.

Furthermore, some Member States have already started to transfer the decision-making on visa applications from consulates to central authorities. A debate should therefore be launched on whether, and under which circumstances, the integrity and security of visa processing can be safeguarded in such cases. Such a debate will need to consider, on the one hand, the importance of knowledge of local circumstances in the migratory risk assessment involved in each visa application decision and, on the other hand, the advantages of a centralised approach in terms of efficiency and transparency.

7. CONCLUSION

The EU common visa policy is an essential element for ensuring the security and proper functioning of the area without internal border control. It has facilitated legitimate travel to the EU and has gone a long way towards ensuring harmonisation in Member States' visa issuing practices. In addition, visa policy has developed from an internal policy into an increasingly important external relations tool for the EU.

Despite this solid track record, the legal framework underpinning visa policy needs to be adapted to the current challenges, in particular the increased irregular migration and security risks. To this end, the Commission is proposing today a number of amendments to the Visa Code and calls on Parliament and the Council to adopt them swiftly. Amendments to the VIS legal framework will follow later in spring.

In parallel, the Commission will, together with the High Representative for Foreign Affairs and Security Policy, work on ensuring coherence between the EU visa policy and the EU external relations to better serve the EU's interests, including the consistency of visa policy with other policy areas.

Looking into the future, the Commission will initiate discussions with Parliament, the Member States and other stakeholders on the further digitalisation of visa processing. Studies to be launched by end-2018 will also feed into the discussions. The need for sufficient financial resources will be an important element to take into consideration in the post- 2020 multi-annual Financial Framework.