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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 each proposal is likely to be held on 13 October 2015.

As regards proceedings in the Council, the Visa Working Party started the first reading of the draft Regulation recasting the Visa Code in June 2014 and as regards the draft Regulation on touring visa in October 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.

The Committee examined those issues on 24 September 2015 on the basis of doc.11858/15. The Presidency has on that basis prepared the present revised document with a view to further discussions in the Permanent Representatives Committee and in the Council.

II. Outstanding issues

A. Overall approach regarding the Visa Code recast

Before analysing several outstanding issues, which are perceived as sensitive and for which political guidance from Ministers would help significantly to advance the discussions, the overall approach regarding the Visa Code recast should be considered.

The principal aim of the proposal for recasting the Visa Code is to give a positive impact on the wider European Union economy, in particular on tourism, by generalising a number of facilitations for legitimate travellers needing a visa. These facilitations, including lower fees for certain categories and easier procedures, have so far been granted in a number of cases by means of conclusion of visa facilitation agreements between the EU and specific third countries in combination with the conclusion of readmission agreements with these countries. The granting by the EU of visa facilitations has largely been used as a leverage to convince the third countries concerned to in parallel conclude readmission agreements. Those agreements imply that the other party not only must take its own nationals back but also must accept nationals of other third countries which have entered the EU from that party.

In the European Agenda on Migration, the Commission has, in the context of return, indicated that it will also revise its approach to readmission agreements, prioritising the main countries of origin of irregular migrants.

The European Council in its Conclusions of 25 and 26 June 2015 focused on three key dimensions which must be advanced in parallel: relocation/resettlement, return/readmission/reintegration and cooperation with countries of origin and transit. It concluded that all tools shall be mobilised to promote readmission of irregular migrants to countries of origin and transit, building on the ideas presented by the Commission at the Council on 16 June¹, that the Commission will ensure that readmission commitments are implemented effectively as soon as possible, notably those under the Cotonou Agreement, and that ongoing negotiations on readmission agreements are accelerated and concluded as soon as possible, while new negotiations will be launched with other third countries.

It may be appropriate to reconsider if introducing visa facilitations in the Visa code, which traditionally are granted by means of agreements, is the best way forward in this context at this time.

The Presidency suggests that the Council follows a coherent comprehensive policy approach taking fully into account ongoing efforts on readmission, security and borders whilst continuing work towards a positive impact of the visa policy on the wider European Union economy and, in particular, on tourism.

B. Specific issues on Visa Code Recast

The Presidency submits 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.

¹ See doc.10170/15

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 fewer 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 light of these considerations, the Presidency suggests:

- *the issuance of the MEVs is not to be made compulsory regarding VIS registered regular travellers and the issuance of the MEVs should be subject to a sufficient marge of discretion that would encompass political consideration such as security risk and cooperation on readmission, and*
- *it should therefore 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 light of the above, the Presidency proposes to:

- *reintroduce the article regarding the TMI, and*
- *instruct the preparatory bodies of the Council to examine how the current system could be improved.*

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 suggests that;

- *the scope of the definition of “close relatives” of Union citizens should be limited to "family members" as defined in Directive 2004/38/EC .*

4) Mandatory representation of Member States (Art. 5(2))

Currently, Member States have to cooperate to prevent a situation in which a visa application cannot be examined and decided on because the Member State that is competent in accordance with the Visa code is neither present nor represented in the third country where the applicant lodges the application. In order to avoid in this case obliging the applicant to travel to a country where the competent Member State is present or represented, the Commission has proposed that the applicant would be entitled to lodge the application at the consulate of one of the Member States of destination of the envisaged visit, or at the consulate of the Member State of first entry if the first option is not applicable but also in all other cases at the consulate of any of the Member States that are present in the country concerned.

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 .

Many delegations have expressed concerns vis-à-vis the concept that the application could be lodged at any consulate present in the third country, which would entail an unequal burdening in staff and costs on certain Member States that have a broad consular network. Furthermore, delegations have stressed that the actual practice based on existing representation arrangements was satisfactory. As a way of compromise, delegations have suggested that bilateral arrangements could be concluded to enhance the consular coverage in the third countries concerned.

In light of these considerations, the Presidency suggests keeping the existing rules on competence, with the addition of a possibility for Member States to conclude bilateral arrangement with a view to ensuring adequate consular coverage.

C. The scope of the touring visa (T-visa) proposal

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.

Furthermore, the proposal also partially repeals Article 20(2) of the Convention implementing the Schengen Agreement (CISA), according to which, if a Member State has concluded a bilateral visa waiver agreement with a third country on the list in Annex II of the Visa Regulation ('visa-free list') before the entry into force of the CISA (or the date of the Member State's later accession to the Schengen Agreement), the provisions of that bilateral agreement may serve as a basis for that Member State to 'extend' a visa-free stay for longer than three months in its territory for nationals of the third country concerned. The citizens of those third countries (visa free) can stay in such Member States for the period provided by the bilateral visa waiver agreement in force between the Member States and these three countries in addition to the general 90-day stay in the Schengen area. It entails that their citizens can legally stay for a virtually unlimited period in the Schengen area on the basis of the different short-stay visa waiver agreements concluded by their country and several Member States.

In its proposal, the Commission took the view that the existence of bilateral "extensions of stays" is incompatible with 77(2)(a) and (c) of the TFEU because the common policy on visas cannot be based on the existence of bilateral agreements from the past. The Commission also argued that the implementation of Article 20(2) raises practical problems and creates legal uncertainty both for authorities and travellers, especially when the latter are to depart from the Schengen area. In addition, the future Entry/Exit System requires clear-cut rules and for technical reasons, account cannot be taken of the possible continued application of bilateral visa waiver agreements when the period of authorised stay is to be verified. Therefore the proposal provides for a five-year transitional period for Member States to "phase out" the impact of their bilateral agreements as far as the overall length of stay of third-country nationals is concerned in the Schengen area.

Delegations have strongly opposed the idea of denouncing the existing bilateral agreements since, on the one hand, the nationals of the third countries concerned do not pose any security nor illegal immigration risks and, on the other hand, the visa waiver provisions are often inserted in more global agreements that would be difficult to renegotiate on a diplomatic point of view, let alone when such agreements also provide for reciprocal visa waiver benefiting to EU citizens.

The Presidency suggests to:

- *limit the scope of the draft on a Touring visa to certain categories of applicants , and*
- *instruct the preparatory bodies of the Council to examine the issue of bilateral agreements covered by Article 21(2) of CISA, taking into account also the future Entry/Exit system.*

III. Conclusion

The Permanent Representatives Committee/Council is invited to:

- agree to the suggestion made under point II.A on the overall approach regarding the Visa Code recast;
- agree to the suggestions made on specific issues regarding the Visa Code recast under point II.B;
- agree to the suggestions made regarding the Touring Visa proposal under point II.C

with a view to frame the further proceedings in the Council preparatory bodies.
