

Drafting suggestions – alternative text for the Articles 6 and 7 touring visa

Gaps between stays on the basis of touring/short-stay visas/visa-free stays

On the basis of the last proposed text on Article 7(3), the length of authorised stay should not exceed "one year in any-two year period". This concept raises some questions: How would the validity be calculated, if the length of authorised stay was less than one year (e.g.: six months in any one-year period, six months in any two-year period)? How would it affect other stays (on a short-stay visa or visa waiver)? Would the touring visa holder be blocked from all stays during the remaining two-year period as soon as he has completed his "year"?

Another option that could be integrated into the current Schengen system would be to require that there is always at least a gap of 90 days between a previous stay (on the basis of a short-stay visa, a visa waiver or a previous touring visa) and the intended stay on the basis of the touring visa (as well as between the "touring visa stay" and any subsequent stay). As it is the current rule for Schengen stays, national long-stay visas and residence permits are not taken into account.

This would ensure that there **cannot be an endless succession of touring visas** and that the **normal 90/180-day rule applies before and after the "touring visa stays"**.

The new suggested changes, comparing to the previous drafting as set out in 14144/15, are marked in *italics*, with additions underlined and deletions shown in ~~strikethrough~~.

Article 6

Examination of and decision on an application

...

4. The consulate shall verify whether applicants have stayed on the territory of the Member States in any of the 90 days preceding the intended stay, ~~examination of an application for a touring visa and decision on that application shall be conducted~~ irrespective of possible stays authorised under ~~previously issued short-stay visas or a short-stay visa waiver~~, national long-stay visas or residence permits.

...

Article 7

Issuing of the touring visa

...

3. The length of authorised stay shall be decided on the basis of a thorough examination of the application. The length of authorised stay shall not exceed one year ~~*in any two year period*~~, but it can be extended for up to a further year in accordance with Article 8.

...

7. In addition to the reasons of refusal listed in Article 29(1) of Regulation (EU) No xxx/201x [Visa Code (recast)], a visa shall be refused if applicants ~~do not provide~~:

...

(e) have stayed on the territory of the Member States in any of the 90 days preceding the intended stay on the basis of a uniform visa, a visa with a limited territorial validity or an exemption from the visa requirement pursuant to Regulation (EC) No 539/2001.

...

The refusal form in Annex II would have to be adapted to reflect these new refusal grounds.

The Visa Code recast proposal would have to be adapted to ensure that, when applying for a short-stay visa, the 90/180-day rule applies to stays under touring visas (Article 18(6): delete "touring visa", and Article 29(1)(a)(iv): add "touring visa").

The Schengen Borders Code and the Schengen Convention would have to be amended accordingly (through adaptations in Articles 12 and 13 of the touring visa proposal).