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NOTE

From:	Presidency
To:	Delegations
Subject:	Draft Regulation of the European Parliament and of the Council on the Union Code on Visas (Visa Code) (recast) - State of play after the first examination of the articles and suggested way to move forward

The aim of this document is to provide Member States with a short and concise overview of the state of play of the discussions concerning the draft Regulation amending the Visa Code after the end of the first examination of the articles, as well as to inform Member States regarding the Presidency's suggestion for how to move forward with the examination of the proposal.

I. Background

The proposal, adopted on 1 April 2014 by the Commission and the objective of which is to recast the Visa Code¹, contains a number of amendments to Regulation (EC) No 810/2009². The proposal builds on the conclusions drawn in the Report from the Commission to the European Parliament and the Council on the evaluation of the implementation of the Visa Code³. The report is accompanied by a Commission staff working paper⁴ covering the detailed evaluation of the implementation of the Visa Code.

¹ COM (2014) 164 final. See 8401/14.

² Regulation (EC) No 810/209 of the European Parliament and of the Council of 15 September 2009 establishing a Community Code on Visa (Visa Code)

³ COM (2014) 165final. See 8478/14.

⁴ SWD (2014) 101 final. See 8478/14 ADD1.

The proposal takes into account the increased political emphasis given to the economic impact of the visa policy on the wider European Union economy, and in particular on tourism, to ensure greater coherence with the growth objectives of the Europe 2020 strategy (see Commission's Communication on "Implementation and development of the common visa policy to spur growth in the European Union")¹. Thus, according to the proposal, the common visa policy should contribute to generating growth and be coherent with other Union policies, such as external relations, trade, education, culture and tourism.

The proposal contains amendments that, while maintaining security at the external borders and ensuring the good functioning of the Schengen area, also facilitate travel opportunities for legitimate travellers and simplify the legal framework in the interest of Member States, e.g. by allowing for more flexible rules on consular cooperation. This proposal also clarifies the procedural facilitations that apply to family members of EU citizens under Directive 2004/38/EC². Taking into account the principle of equal treatment of EU citizens, it enlarges the scope of certain procedural facilitations to cover all family members of EU citizens, irrespective of their place of residence.

The Commission presented its proposal in the Visa Working Party/Mixed Committee on 15 April 2014 and in the Mixed Committee at Ministerial level on 5 June 2014.

The proposal was generally well received by delegations, although several of them entered a general reservation on the whole text of the proposal. The Working Party started the detailed examination of the proposal amending the Visa Code (Articles 1 to 55) at its meeting in June 2014 and finished it on 23 January 2015. General issues relating to the whole proposal were raised during the first examination of the articles, such as the financial impact of the proposal (at national as well as EU level), immigration and security issues, and relations between the proposal and the Smart Borders Package, as well as issues connected with the choice between delegated and implementing acts. During the examination, delegations also raised a number of specific issues on individual elements of the proposal (See part II).

As regards proceedings in the European Parliament, Mr Lopez Aguilar (LIBE) has been appointed as Rapporteur for the file but discussions with the Council on this file have not yet started.

¹ COM(2012) 649 final.

² OJ L 158, 30.4.2004, p.77.

II. Main outstanding issues

On the basis of the discussions during the initial examination of the articles, the Presidency has identified the five main issues listed below:

1. The definition of and the facilitations granted to :

- "VIS registered applicants": Art. 2(8), Art. 9(2), Art. 13(6);
- "VIS registered regular travellers": Art. 2(9), Art. 13(2) and (6), Art. 18(2) and (3), Art. 21(3) and (4).

Delegations mainly questioned the added value of such definitions and criticised the "automaticity" of the issuing of visas linked to those categories of applicants, *inter alia* as regards the issuing of Multiple Entry Visas (MEV).

2. The deadlines as regards the submission of applications, the prior consultation and the decision on the application: Art. 8(1), Art. 19, Art. 20(1) and (2).

Some delegations are of the opinion that it should be possible to extend or shorten the deadlines for lodging an application in certain cases. However, shortening the deadline for taking a decision on the application seems unacceptable for the majority of them, due mainly to the prior consultation deadline.

3. The visa fee: Art. 14.

Several delegations suggested differentiating the fee on the basis of the type of visa issued (single or multiple-entry visa) and a few were against the proposed fee waivers.

4. The Travel Medical Insurance (TMI) : Art. 15 (deleted).

Delegations opposed the deletion of the TMI, because of large numbers of medical bills left unpaid by third-country nationals in Member States.

5. The definition of and the facilitations granted to "close relatives" of Union citizens : Art. 2(7), Art. 8(3), Art. 13(3), Art. 14(3)(f) and Art. 20(3).

Many delegations were of the opinion that the definition was too broad and that this category gave rise too often to illegal migration.

The facilitations granted to family members of Union citizens: Art. 8(4), Art. 13(3), Art. 14(3)(g), Art. 20(3) and (4).

As regards the two categories of applicants (close relatives and family members), a majority of delegations are opposed to the proposed facilitations in favour of them throughout the text.

III. Suggested way to move forward

To proceed further, the Presidency aims to reach agreement on as many outstanding issues as possible within the Visa Working Party without prejudice to other issues raised by Member States during the initial examination of the articles, with a view to contributing to achieving agreement on the Council's position.

To that end, the Presidency is planning to deal with those issues in the same sequence, thus starting discussions as early as the Visa Working Party/Mixed Committee meeting in March 2015 with the issues regarding "VIS registered applicants" and "VIS registered regular travellers" and deadlines (submission of applications, prior consultations and decision on the application)

When drafting its compromise suggestions, the Presidency will commit itself to take due account of the concerns expressed by Member States during the first reading of the proposal, as well as to ensure a fair balance between security considerations and simplification of legal framework for legitimate travellers.