



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 20 June 2006

10540/06

LIMITE

**VISA 157
COMIX 551**

OUTCOME OF PROCEEDINGS

of: Visa Working Party/Mixed Committee (EU-Iceland/Norway/Switzerland)
dated: 13-14 June 2006
Subject: **Summary of discussions**

- 1. Modified proposal for a Council Regulation amending Regulation (EC) 1030/2002 laying down a uniform format for residence permits for third-country nationals**
8550/06 VISA 80 COMIX 267
10171/06 VISA 152 COMIX 523
10304/06 VISA 153 COMIX 530
10342/06 VISA 154 COMIX 531

The outcome of discussions on this issue is set out in 10541/06 VISA 158 COMIX 552.

- 2. Setting of the minimum age for recording and storing facial images and fingerprints in the chip of a passport or residence permit and in the Visa Information System**
9403/06 FAUXDOC 9 VISA 135 COMIX 463

AT presented the above mentioned document, asking delegations whether a common solution for all documents (visa, residence permits and passports) or a solution that meets the specificities of each document should be chosen.

UK noted that the choice should be linked to the purpose of the document, i.e. a passport generally has a validity of 10 years and thus the security level must be higher than for short stay visas and residence permits, although the latter entitle the holder to longer stays. According to this delegation storage of the facial image (at any age) in a chip represents a security feature even if it can not be used for facial recognition.

DE was in favour of a differentiated approach and wished to stick to 6 years for collecting biometric data from visa applicants. As for passports, DE could accept the suggestions in the text but noted that currently minimum age for collection of biometric data from German nationals for passports was 14 years according to national legislation.

The **Commission representative (COM)** confirmed that the issue of possible exemptions from "biometric requirements" in relation to passports should have been addressed earlier. Another issue that had so far not been dealt with properly was the issue of "one person - one passport". COM recalled that according to technical studies, fingerprints could be used from the age of 6 for "one to one search" but not for search in big databases. COM recalled that there is no Community legal basis covering matters related to passports except for their security elements in relation to crossing of the EU external borders.

The representative of the Council Legal Service (CLS) confirmed that theoretically harmonisation of the minimum age for recording and storing facial images and fingerprints in the chip of a passport could be based on the same legal basis as the one of Regulation 2252/2004. However, the question should be verified on the basis of a concrete text.

LU informed other delegations that with the introduction of biometrics in passports, Luxembourg would start applying "one person - one passport" principle with the storage of facial image for everybody regardless the age and fingerprints from the age of 12, but LU could accept a minimum age of 6 for fingerprints as well. **NL** noted that the Netherlands wished to allow parents to choose to have their children included in one of the parents' passport and thus no facial image of the child would be stored. Fingerprints would in any case not be collected before the age of 6. **SE** was in favour of a differentiated approach and could agree with the minimum age of 6 years for passports.

FR was somewhat taken aback by the Presidency's document, noting that it had been agreed in SCIFA that the minimum age for collection fingerprints and digital photo for the purpose of VIS should be 6 years and this question should not be reopened. Moreover, FR, supported by **NO** and **LV**, was in favour of a minimum age as low as possible to protect children against human trafficking.

UK noted that UK authorities collect fingerprints from the age of 5 and their experience was that the collection posed no significant problems and both matches and hits were possible at such a young age. In relation to passports, the "age issue" should be based on the validity of the passport. **CZ** supported these points of view.

The **Chair** noted that the Presidency would amend its note¹ on the basis of the comments made by delegations and invited the incoming Finnish Presidency to take this matter forward.

3. Minimum security standards for identity cards 8943/1/06 VISA 124 COMIX 419 REV 1

COM presented the above mentioned report requested by the Representatives of the Governments of the Member States in the margins of the Council meeting on 1-2 December 2005, indicating that it would now be up to Member States to decide on the next step, which could be to have conclusions adopted by Representatives of the Governments of the Member States. **CLS** confirmed that as there is no legal basis in the Treaty governing these issues, that could, indeed, be the way to take this matter forward. The **Chair** concluded that the report set out in the annex to the above mentioned document could be turned into draft conclusions to be submitted to SCIFA at the earliest convenience.

4. Member States' practices in relation to the issuance at the external border and in consular offices of visa to seamen in transit

COM recalled the specific nature of the issuance of visa to seafarers given, on the one hand the economic dimension of the question and on the other hand the fact that the individual seafarer's situation was analogue irrespective of where he/she would apply for a visa, because work contracts and insurance issues are generally governed by the ILO Convention. Yet the Commission regularly received complaints from various professional seafarers' associations because Member States apply different procedures for issuing visas to this rather homogeneous category of visa applicants. **COM** also recalled that the Visa Working Party had discussed this issue a number of times over the last years, but that conclusions had generally been drawn on the basis of delegations' lack of reaction. Therefore a questionnaire on this subject had been launched in January 2005.

¹ **Afternote/SG:** 9403/06 FAUXDOC 9 VISA 135 COMIX 463 is to be examined by the Frontiers/False Documents Working Party on 27.6.2006

Despite the several reminders to provide comprehensive replies (i.e. concerning both the issuance of visas at the border and by consulates), an analysis of the compilation showed that out of the six useful replies, only three were provided by the Member States applying the Schengen acquis in full, and of those three replies only one could be described as satisfactory.

While establishing this relative failure, COM was of the opinion that another attempt should be made to obtain valid information on this issue. COM therefore suggested a more pragmatic and operational approach consisting in targeting the research for information to a limited number of locations, where high numbers of seafarers frequently apply for visa, i.e. Bangkok, Mumbai, Manila.

Although supporting this suggestion, **BE** feared that it could be counter productive, given that the majority of visas issued to seafarers were issued at the border as was the case for Belgium. **BE** reminded delegations of the relatively low risk of illegal immigration that this category of persons represents. **DK** agreed to the latter statement and suggested that consular staff be instructed to issue multiple-entry visa with a longer duration to seafarers. **COM** noted that both delegations' replies to the questionnaire as well as visits to Member States' consulates where high performing procedures had been established to this end, seemed to go against the assumption that most visas to seafarers in transit were issued at the border, and recalled that Council Regulation 415/2003 explicitly stipulates that visas should only exceptionally be issued at the border.

Responding to a query from the Chairman, **COM** noted that the future recast of the CCI would amend the acquis in relation to seafarers only to a certain extent, but that given the lack of accurate information, delegations should not expect any revolutionary proposals in this respect.

As there was broad support for pursuing the suggestion made by COM, the incoming Finnish Presidency would consult the Commission on how to proceed on this matter.

5. Local Consular Cooperation
- Final report on the Targeted Missions 2004-2005
9929/06 VISA 145 COMIX 505 + COR 1 (en)

This issue was postponed to a future meeting.

6. Proposal for a Regulation of the European Parliament and of the Council amending the Common Consular Instructions on visas for diplomatic and consular posts in relation to the introduction of biometrics including provisions on the organisation of the reception and processing of visa applications
10023/06 VISA 147 CODEC 573 COMIX 511

COM presented the above mentioned proposal of whose main objectives was to complement the "VIS Regulation", that creates the "VIS system", whereas it does not cover the impact of the VIS on the procedures for issuing short stay visas. On the one hand the proposal creates the obligation for Member States consulates to collect biometric data and sets out the standards for these data and on the other hand it introduces additional provisions for the organisation of consular posts to cope with these new tasks, by creating a legal framework for setting up Common Application Centres, outsourcing and a new form of "limited representation". COM emphasised that the recast of the Common Consular Instructions will be available very soon and it would incorporate this proposal, but the Commission had chosen to submit a separate legal instrument in order to be able to make progress on the issues related to the VIS quickly. COM highlighted the following key points of the proposal:

- **the standards for biometrics** are based on the outcome of the experts meeting held in January 2006. The **exemptions** from providing fingerprints cover children under 6 years and persons from whom it is impossible for physical reasons to collect fingerprints. The **exemption of holders of diplomatic passports, service/official passports and special passports** is based on the fact that Member States are entitled - under Regulation 539/2001 - to individually exempt these categories of persons from the visa requirement, so it would seem logic to allow for the exemption from "fingerprinting";
- as far as the **organisation of consulates** is concerned, Member States remain responsible and may choose any form of those proposed;
- according to the Commission **the principle of "one stop"** must be maintained, although deviation from it may be justified in certain places for reasons of security and high volumes of applicants;

- **outsourcing** of parts of the visa handling procedure is not currently covered by the acquis, but as a number of Member States already practice it, the Commission accepts that this option is justified under certain circumstances. However, the issue of data protection is a key element in relation to outsourcing, and will no doubt also give rise to intensive discussions with the European Parliament.

Delegations were not in a position to start detailed examination of the articles, but the following general issues were raised:

a) Organisation "on the spot"

DE recognised that the process consisted of 2 steps, where the individual Member State should first decide for itself, but then Member States would have to agree and coordinate these individual solutions "on the spot". **DE** found that it would be desirable if the Commission could play an active role in the second phase. **ES** supported the latter point.

COM indicated that the Commission would be willing to contribute to the coordination.

b) Issuance of visa in EU Member States

DK was happy about the prospects of closer cooperation and wondered whether the new forms of cooperation could be applied in the capitals of Member States as the number of visas issued of the individual Member States were generally very low.

c) Personal appearance and frequency of collection of biometric data

NL was in favour of personal appearance of visa applicants and collection of biometric data for each application and could not accept the 48 months deadline, allowing persons to apply for visas during a fairly long period without being checked in the VIS. **FR** agreed and referred to Article 5 of the draft "VIS Regulation", that stated that biometric data shall be collected upon application and was surprised that the Commission could justify this part of the proposal, as it would seem useless to set up the VIS if data were only to be collected once every four years. **FR** noted that in order to avoid that bona fide frequent travellers had to apply for a new visa very often was to issue multiple-entry visas with a long validity. **LV** supported these points of view. **NO** drew delegations' attention to the problems that holders of visa might encounter at border control posts, if this provision was adopted.

COM noted that the 48 months should be seen in relation to the 5 years retention period stipulated in the "VIS Regulation".

d) Distinction between different types of service providers

IT wondered why travel agencies and similar service providers should no longer be allowed to collect applications from first time applicants and wondered how a distinction could be made. **IT** was of the opinion that as long as the service provider fulfilled security and other requirements, they should all be allowed to submit applications. **ES** shared this point of view.

COM noted that by the requirement of all first time applicants to apply in person would make it impossible for them to apply via a travel agency. **COM** was of the opinion that travel agencies and the like should be seen as "offering a service" to the applicant by submitting the application for him/her, whereas service providers took upon themselves to carry out tasks usually performed by consulates.

e) Costs of outsourcing

IT was surprised that outsourcing was not to give rise to any additional costs as that was exactly how outsourcing worked. **FR** supported this point of view and noted that when an applicant applied for a visa via a service provider the visa would in future cost 60 EUR + fee for service provided.

f) General exemption of holders of diplomatic passports

IT noted that if such a general exemption were to be made, it would cover an enormous number of persons, noting that for instance approx. 4 Mio Chinese hold Public Affairs Passports. **FR** supported this point of view and drew delegations' attention to the political pressure that Member States would have to face from third countries wishing to obtain such exemption. **FR** was against exemptions for any category of persons. **LV** and **BE** shared these concerns. **COM** recalled that this possibility was optional.

g) "Limited" representation

FR noted that such a procedure would not only go against the principle of "one stop" but also create practical difficulties as it would have to be decided which Member State would collect (and keep) the handling fee, given the fact that the reception of the application form is the beginning of the processing. **FR** could not accept this form of representation and wished that "representation" legally remained unchanged.

h) Relevance of the Proposal

FR wondered whether there was any justification for a Community Regulation to set up rules for the organisation of partnerships such as common application centres (CACs) or co-location. **FR** found the Commission's approach very disappointing and was surprised that the proposal contained no reference to possible Community funding. **PT** shared the latter point of view. **COM** noted that currently there was no Community funding for such purposes and moreover the CCI is not a financial instrument. **COM** recalled the on-going work on burden sharing.

Furthermore, **FR** noted that although being in favour of outsourcing, **FR** could not accept the conditions imposed by the proposal and recalled that such contracts were governed by public finance and Member States' internal organisation. **FR** suggested that the proposal be limited to deal with creating the legal basis for collecting biometric data and set up the standards for these data.

ES also wondered what the added value of CACs would be and found the idea unrealistic. **ES** also found it illogic that the handling fee had recently been raised to 60 EUR on the justification that this was necessary in order for Member States to finance the collection of biometric data for the purpose of VIS and now CACs should be set up in order for Member States to share the financial burden of the introduction of VIS. **ES** found that an economic impact study was required to find out whether CACs would be realistic, who would be in charge, who would set up the operating rules?

PT also expressed doubts about the added value of CACs and noted that in any case Portugal would deal with the collection of biometrics at their own consulates. Were such common offices to be set up, they would have to process the applications as well.

HU shared the concerns of these delegations, noting that the provisions as drafted on CAC simply cannot be applied and pointed to the problem of the international status of such centres.

BE found that the proposal was premature, as much adaptation to the introduction of VIS still remained to be done, and suggested that a political decision was taken based on the Commission proposal in relation to creating a legal framework for outsourcing.

COM recalled that the Hague Programme adopted by the European Council had called upon the Commission to draw up a proposal on CAC. In addition, **COM** noted that the status of such CACS would have to be examined further. Finally, **COM** drew delegations' attention to the fact that CACs were meant as a help to both Member States and applicants (see AOB, item 3, third indent, below).

i) "Exclusion" of the Member States not applying the Schengen acquis

HU and **LV** found that the regulation should also apply to "new" Member States. **COM** noted that the status of this legal instrument was in line with the "VIS Regulation".

j) Pilot projects on CAC

SE wondered what the future was of the idea of the Commission setting up a pilot project for a CAC. **COM** informed delegations that this issue would be raised in the Committee on Asylum and Immigration on 20 June 2006, and invited delegations to consider participating in such a pilot project (see AOB, item 3, third indent, below). A Commission paper on this issue would be submitted shortly.

The **Chair** concluded that this proposal had given rise to a number of practical, organisational, financial and political issues to be dealt with as soon as possible - also in relation to the European Parliament - otherwise Member States were likely to go their own ways.

7. AOB

1) Recognition of Pakistani passports

DE would like to know whether other Schengen States have recognised Pakistani passports of the 2004 model (ordinary passports, official passports, diplomatic passports) without limitations or whether they intend to do so. **DK, CZ, FR, SE** and **IT** indicated that they recognise these documents, whereas **BE** is still awaiting additional information from document experts.¹ **CH** recalled the general principle for Swiss authorities' recognition of third country travel documents: they must be issued by a third country recognised by Switzerland, the nationality of the holder must be indicated, and the holder's return to his country of origin must be guaranteed.

2) Information by COM on relations with third countries:

- Future visa dialogue with Russia

As a follow-up to the reference made in the preamble to the visa facilitation agreement between the EU and Russia to the "future visa dialogue", a meeting had taken place on 17.5.2006 at senior officials' level. The aim of this meeting had been to define the structure of discussions and issues to be covered (inter alia document security, public order and security, external relations) in the future visa dialogue with Russia. The objective of the next meeting scheduled for October 2006 would be to set up the work method.

¹ **Afternote/SG:** Attention is drawn to the Table of Travel documents (which is a publicly accessible document), according to which all Member States applying the Schengen acquis in full recognise the three categories of Pakistani passports, with no indication of particular models of these documents.

- **Negotiations with Ukraine on visa facilitations: State of play**

A meeting scheduled for 30-31 May 2006 had been cancelled at the request of the Commission as a reaction to additional requirements formulated by the Ukrainian side, among others the request for financial and technical assistance by the Community for readmission. The Commission had rejected Ukrainian requests for exemptions from the visa requirements of holders of service passports and for waiving of the handling fee for single-entry visas. **COM** indicated that negotiations might be concluded by the end of July 2006 as it seemed that the Ukrainian side were now willing to limit the demands. **FR** emphasised that France would not accept that the Russian approach of postponing the readmission of third country nationals and stateless persons three years beyond the entry into force of the other agreements serve as a precedent for Ukraine.

- **Moldova**

COM informed delegations that a meeting within the general dialogue on the JLS action plan for Moldova had taken place on 7 June 2006. Moldova had requested negotiation mandates (on visa facilitation and readmission) to be finalised before the end of 2006, mainly in order to avoid the increase in the handling fee, entering into force on 1 January 2007. The Commission had made no commitment vis-à-vis Moldova, but **COM** indicated that internal discussions in the Commission were ongoing.

COM took the opportunity to draw delegations' attention to one of the complaints expressed by Moldova: the lack of Member States' consular posts in Moldova, meaning that visa applicants in many cases had to travel to Bucharest to apply for a visa. Therefore **COM** invited delegations to consider the possibility of setting up a pilot project for a Common Application Centre in Chisinau.

4) CJC Judgment

COM informed delegations of the practical implications for all Member States of the judgment of the Court of Justice in Case C-503/03 (Commission v Spain), recalling that according to the ruling of the CJC family members of EU citizens can not be refused entry on the sole ground that they are signalled in the SIS. It would in addition have to be established that the person in question presented a real threat to public order.

FR recalled a question that it had raised in June 2005¹ in relation to Member States' central authorities' lack of communication of the reason for opposing (under the prior consultation procedure) the issuance of a visa to a family member of an EU citizen. This lack of information left the visa issuing Member State with two unsatisfactory alternatives: either to blindly issue a visa with limited territorial validity or blindly to refuse to issue a visa. **COM** shared this analysis and noted that Member States are obliged to motivate opposition in such cases. **BE** drew delegations' attention to both technical and practical problems related to this matter and suggested that this issue be dealt with thoroughly at the next meeting. **FR** supported this suggestion and added that the Visa form does not allow for the indication by the consulting Member State to the consulted one that the applicant in question belongs to this category of persons.

5) Chinese authorities' concern in relation to the future mandatory collection of biometric data from visa applicants

The **Chair** informed delegations about the Presidency's recent contacts with Chinese authorities on this issue. The Chinese authorities had expressed the wish that holders of diplomatic and service passports, persons travelling in groups, persons under 14 and above 65 years be exempted from giving biometric data. The concern was mainly related to the fingerprinting but also the taking of the digital photo was considered problematic. Several delegations reported that they had been approached as well in what would seem like a systematic campaign on the part of the Chinese authorities. **FR** noted that it was important not to convey any hopes to any third country about general exemptions from these measures. The Chair noted that in its reply the Presidency had emphasized that this was a Community measure and that the Community would address the Chinese concerns. Referring to the discussions under item 6 on the formal agenda, the Chair noted that this was an example of the political pressure that the Community would face, if exemptions from the "biometric requirement" were granted.

COM informed delegations that the following meetings with China were scheduled: 5 July 2006: preparatory technical meeting on readmission; 6 July 2006: High Level Consultation on Migration issues (in this framework the introduction of biometrics will also be discussed); 7 July 2006: Second ADS MoU Committee meeting.

¹ Outcome of proceedings: 10776/05 VISA 158 COMIX 433, page 23.

6) FYROM - visa facilitation agreement

The **Chair** gave a summary of the discussions on the Recommendation from the Commission to the Council in order to authorise the Commission to open negotiations for the conclusion of an agreement between the European Community and the former Yugoslav Republic of Macedonia on the facilitation of issuance of short-stay visas.

7) Amendment of Annex 2 to the CCI

LT informed delegations that Lithuania has started negotiations with Georgia on exempting Georgian nationals holding diplomatic passports from the visa requirement when travelling to Lithuania.

8) Amendment of Annex 5B to the CCI

DK informed delegations about Denmark's intention to amend Annex 5B to the CCI.

9) Draft VIS Regulation- update on contacts with the European Parliament

The **Chair** briefly informed delegations about the Presidency's negotiations with the European Parliament rapporteur on the above mentioned proposal, noting that progress had been made on a number of points but that the "make or break points" seemed to remain: the bridging clause (the European Parliament wishes a very comprehensible text and has emphasized that it is essential to have a final text on the "third pillar instrument" (on the access to VIS), before a final agreement on the VIS Regulation could be reached); data protection issues is also very important to the "LIBE Committee" but the Chair noted that it is unrealistic that the proposal for a Council framework decision on data protection would be available in the coming months; the new Article 11A causes major problems for the rapporteur; consultation of the VIS should be based on a step-by-step approach; roll out.

The Chair informed delegations that the EDPS¹ and the "Article 29 Committee"² had been consulted on the major amendments, involving data protection issues, that had been made by Member States to the original Commission proposal. Finally, the Chair reminded delegations that in order for the VIS Regulation to be adopted in first reading, Member States should be willing to accept compromise solutions with the European Parliament. **COM** endorsed the Chairman's account of the state of play and noted that it would seem wiser to reflect a bit longer and take more time for contacts with the rapporteur in order to obtain agreement on as many issues as possible, before the LIBE Committee voted on a final text.

COM noted that a delay in the adoption of the legal instrument will have an impact on the start of operations of VIS since there is a need of six months period after adoption of the legal instrument for the technical implementation and testing of the central system. As for the SIS II, a new calendar will be elaborated, as announced in CATS.

10) Request for information by the US authorities on Schengen visas (biometrics)

LU wished to know whether other Member States had received a questionnaire from the US authorities for the purpose of providing information about the issuance of "biometric" visas in future. The objective of the US survey was to allow the State Department to draw up a report for Congress on these matters. The questionnaire should have been addressed to all Member States covered by the Visa Waiver Programme (VWP). Given the common visa policy, LU was of the opinion that it would be both appropriate and necessary to send a common reply to the US authorities. A "tour de table" among delegations revealed that five "VWP States" had replied to the questionnaire, mainly by referring to the Community policy on visas. Others were not aware of having received the questionnaire or were not part of the VWP.

COM recalled that a similar situation had occurred last year and that by replying individually, Member States gave credence to the US authorities' view of visa policy as a bilateral issue rather than a Community-US issue. The Commission would nevertheless send a formal letter to the US authorities on this issue, recalling that the Member States who were not covered by the VWP all applied the common visa policy. **CLS** confirmed that it would not only be appropriate to "speak with one voice" in this matter but there was also a legal obligation to do so.

¹ European Data Protection Supervisor

² Under Directive 95/46

The **Chair**, although regretting that a common reply could not be sent, emphasized the difficulties at national political level to refrain from replying directly to such requests from third countries. However, Member States should seek in the medium term to impose a code of conduct on themselves in such cases.

11) Issuance of Lebanese visa to Czech nationals

CZ informed delegations that Czech nationals now had to apply for visas for Lebanon at Lebanese consulates rather than being able to obtain visas at the border. CZ had requested that this issue be raised in the Mashraq/Maghreb WP in order to seek to get the Lebanese authorities to reconsider this measure.

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The incoming Finnish Presidency informed delegations that the following meetings were scheduled in the coming six months: 6-7 July, 20 July, 14-15 September (to be confirmed), 2-3 October, 26-27 October, 15-16 November (to be confirmed) and 6 December.

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Corrigendum to 8734/06 VISA 116 COMIX 399 (AOB, Item c) (Seaman's book), page 6

The last but one sentence should read as follows: "**DE** recalled the statement made in relation to the Somali passports, and noted that when the issuing third country was indicated in the seaman's book **and that the issuing third country recognises it as a travel document**, Germany recognised the seaman's book as a travel document to which visas could be affixed."
