



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 22 February 2012

6506/12

LIMITE

VISA 33

COMIX 94

OUTCOME OF PROCEEDINGS

from: Visa Working Party/Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)

date: 7 February 2012

Subject: **Summary of discussions**

1. Amendments to the Schengen Borders Code - Duration of stay

The **Chair** presented 6055/12 and invited delegations to confirm the agreement reached in the Working Party on Frontiers on the new definition of short stay.

Furthermore, the Chair referred to the non-paper of the Commission circulated before the meeting (see Annex I), which lists all the legislative instruments affected by the new definition.

The vast majority of delegations expressed support for the new definition of short-stay. **RO** disagreed with it since it was of the opinion that the deletion of "first entry" would make it impossible to calculate the length of stay.

The **Commission Representative** (COM) asked delegations to send their comments in writing on the question as to whether the list included in the non-paper was exhaustive or not.

The **Chair** concluded that the positive outcome would be forwarded to the Working Party on Frontiers and invited delegations to forward any comments they might have on the non-paper to the Presidency and to the Commission by 22 February 2012.

2. Draft Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 539/2001 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

The outcome of the discussions concerning this item is set out in 6807/12 VISA 40 CODEC 462 COMIX 111.

3. Olympic and Paralympic Games - London 2012

The **Chair** asked delegations how LOCOG's request could best be replied to (see 5385/12).

COM reported that the overwhelming majority of the athletes who are to be issued with an Airport Transit Visa (ATV) would be flying directly to the UK. Only a few of them would have to transit via an airport located in the territory of the Member States. **COM**, while disagreeing with the idea of a general derogation from the visa requirement, suggested that Member States concerned could give full support to facilitating the issuance of ATV's to the persons concerned.

The **Chair** agreed and concluded that the Member States should give guidance to their local consulates to give support to the athletes and their family members who would have to transit via the territory of the Member States on their way to London and to process the ATV applications as smoothly and quickly as possible. **COM** suggested drafting in the coming days a non-paper of the Commission and of the Presidency in order to forward instructions on such guidance to the consulates through the Local Schengen Cooperation.

4. Other business

- a. **Draft Regulation of the European Parliament and of the Council amending Regulation (EC) N° 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)**

The **Chair** reported that the draft Regulation would be adopted by the Council on 10 February 2012 and signed on 15 February in Strasburg. It would be published later in the Official Journal.

- b. **External Borders Fund - Community Actions 2011 - Call for proposals**

COM reported that the deadline for the submission of applications had been set for 9 March 2012 and recalled that all Member States could benefit from the Fund except UK and IE.

- c. **Agreement between the Republic of Bulgaria and Qatar on the exemption from the visa requirement for holders of diplomatic and special passports**

BG informed that the Agreement had entered into force on 18 January 2012.

- d. **Exemption from the visa requirement for holders of Turkish special (green) passports**

BG reported that Bulgaria had decided on 27 January 2012 to exempt the holders of such passports from 2 March 2012.

- e. **Exemptions from the visa fees in Turkey (Article 16(5) of the Visa Code)**

PL reported that Poland had decided to apply the fee waiver provided for in Article 16(5), (a) to (c), in favour of the Turkish applicants.

- f. **Directive 2004/38/EC - Interpretation regarding the beneficiaries of Article 3 of the Directive**

RO asked how that article should be interpreted when family members of an EU citizen joined the latter on the territory of the Member State of which the EU citizen was a national. The **Chair** invited **RO** to send its question by e-mail to the Presidency and to the Commission.

g. Visa reciprocity with Japan

RO explained how Romania had provided information to its nationals concerning the conditions under which they could travel to Japan.

h. Iran - visa ban

NL provided information to the participants on the implementation of visa ban measures affecting certain Iranian industries.

NON-PAPER FROM THE COMMISSION

Definition of short stay – Changes required in the legal acts in the area of visa policy

1. With reference to the note from the Presidency for the Visa Working Party of 7 February 2012 on the definition of the period of stay in the Schengen area, the Commission also notes that there is already a broad support as regards the definition suggested in its previous non-paper which was based on the respective – almost identical - Polish Presidency proposal:

- *"Stays in the territory of the Member States of a duration of no more than 90 days in any 180-day period."*

- Inclusion of entry and exit day into the calculation: *"The day of entry is calculated as the first day of stay and the day of exit is calculated as the last day of stay in the territory of the Member States."*

The main **objective** of this non-paper is **to list the relevant provisions of the legal acts in the area of visa policy where changes are required** in order to ensure legal coherence and the uniform application of the revised definition of short stay.

2. A **horizontal approach shall apply**, i.e. the related provisions of all of the relevant legal acts shall be adjusted in one step via the ongoing "technical" modification of the Schengen Borders Code. The legal basis of this currently discussed proposal (Article 77(2) TFEU) allows us to do so.

However, it must be noted that **any schematic-automatic approach** (i.e. changes to each and every provisions referring to "3 months" and/or "6 months") **is to be avoided**. The nature of the time period/deadline is considered as the decisive factor: it should relate to the duration of stay. Based on this principle, the Commission Services identified **the following provisions to be modified** and invites the Presidency and the Member States for further reflection.

Visa Code: - Art. 1(1)/objective; - Art. 2(2)(a)/definitions; - Art. 25(1)(b)/LTV; - Art. 32. 1. (a)(iv)/refusal; - Annex VI/refusal form; - Annex XI Art. 5 (2)/Olympic

Schengen Implementing Convention (CISA): - Art. 18(1)/long-stay visas; - Art. 20(1)/free movement for visa free third country nationals; - Art. 20(2)/extension on the basis of the old bilaterals; - Art. 21(1)/free movement with a valid residence permit

Regulation No. 539/2001: - Art. 1(2)/visa waiver for nationals of third countries on the list in Annex II. [N.B.: Art. 2 (notion of visa) will be modified via the ongoing modification of this regulation via creating a cross reference to Art. 2(2)(a) of the Visa Code.]

Regulation No 1683/95 (Visa Stickers): - Art. 5/notion of visa [N.B.: Similar cross reference to Art. 2(2) of the Visa Code can be considered.]

Regulation No 767/2008 (VIS): - Art. 12(2)(a)(iv)/data to be added for a visa refusal

3. In **some other provisions** there is indeed a reference to 3 months and/or 6 months, nevertheless the Commission is of the opinion that these **should be untouched**, because:

- they refer to the period of validity of the visa (and not to the length of authorised stay) and according to Annex VII of the Visa Code - Filling in the Visa Sticker - a specific date shall be entered in the "FROM...TO" heading in any case (e.g. Visa Code, Art. 24(2)/MEV; Art. 26(3)/ATV, Annex VII 3.; Annex VII 4.);
- they are manifestly out of context (e.g. Visa Code, Art. 9(1)/lodging an application; Art. 12(a)/travel document).

4. A **corresponding recital** is to be added to the SBC modification explaining the objective of the changes and its horizontal nature. Moreover, in order to ensure legal certainty for the travellers and the authorities, a 90 days **transitional period** shall be set, by stating that the changes shall only apply 90 days after the day of the entry into force of the SBC modification.

5. Regarding the **international agreements** in force, it is to be noted that the visa facilitation agreements already refer to 90 days per period of 180 days. The visa waiver agreements with the six microstates contain joint declarations on the issue stating that the duration of stay cannot exceed 3 months in any 6 months period in total, thus already doing away the notion of "first entry". The agreements with Brazil are fully based on the existing provisions of the CISA.

6. The Commission is well aware that **once the legal acts are modified the two handbooks should follow suit**. The existing examples regarding the calculation of stay will be adjusted and the examples set out in the previous COM non-paper will be added in the most appropriate way.

Moreover the Commission will continue its efforts to make available a "length of stay calculator", preferably based on already existing national calculators.
