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**VISA 358
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NOTE

From:	Presidency
To:	Permanent Representatives Committee/Mixed Committee
No. Cion doc.:	8401/14 VISA 90 CODEC 971 COMIX 201 (COM(2014) 164 final)
Subject:	Proposal for a Regulation of the European Parliament and of the Council on the Union Code on visas (Visa Code) (recast) (First reading)

I. State of play

General

In the framework of the negotiations with the European Parliament (EP), the following issues are outstanding:

1) the recast technique: the Council and the Commission want to stick to the recast rules (possibility for the co-legislators to amend only the parts highlighted in grey in the Commission's proposal). However, as the EP has tabled amendments concerning the white and the grey parts, the Rapporteur pleaded during the last trilogues for a pragmatic approach and advocated widening the scope of the recast exercise.

2) the humanitarian visa: EP strongly insists to include this element and considers that it would be the key added value of the proposed Regulation;

3) the link between the implementation of general facilitations and third countries' cooperation on readmission. This element was added after JHA Council during its meeting on 8/9 October 2015 had decided that readmission should be taken into consideration in the Visa Code, and most delegations find that this element would be the main added value of the proposed Regulation;

4) delegated and implementing acts: EP favours delegated acts to be used (as it is an horizontal request from the EP) throughout the whole Regulation; neither Member States nor the Commission can accept this.

5) mandatory representation as proposed by the Commission and supported by the EP , which is not acceptable for Member States;

6) close relatives; the Commission has proposed procedural facilitations for close relatives of Union citizens residing in the territory of the Member State of which they are nationals to ensure equal treatment with family members already covered by Directive 2004/38/EC. However, a majority of delegations want to limit the facilitations to family members as defined in Directive 2004/38/EC without any further facilitations.

7) mandatory issuing of multiple-entry visas (MEVs) with a long validity as proposed by the Commission and supported by the EP However, delegations wish to maintain Member States' discretion with regard to the length of validity of such MEVs.

Humanitarian visa

In April 2016, Coreper agreed on the mandate for negotiations with the EP (see 8435/16) and the Presidency started negotiating in May 2016. The draft Regulation- in particular the above issues- have been discussed during technical meetings and political trilogues between the three institutions since then.

At the last trilogue on 11 October 2016, views remained strongly opposed regarding in particular the issue of the humanitarian visa.

As he had already stated during the previous trilogue on 6 September, the Rapporteur maintained that the reason behind the proposal for an EU humanitarian visa was a political wish to open new legal avenues for safe access to the EU for persons seeking international protection, to prevent dangerous journeys and loss of lives as witnessed during the last years migration crisis. The aim would be to build a holistic approach by combining visa and asylum procedures within a more dynamic legal framework, the consulates being requested to carry out a pre-assessment of the applicant's eligibility to be provided with international protection. According to the Rapporteur the recast of the Visa Code is a unique opportunity to introduce this new kind of visa and would constitute a real added value to the existing Visa Code.

The Commission maintained that it is inappropriate to provide for a humanitarian visa in the Visa Code, which concerns short-stay visa. Instead, it has proposed to build a bridge between the Visa Code and the resettlement proposal¹ for instance by means of a recital. The Rapporteur finds this unsatisfactory since in his view resettlement constitutes only a part of the reply to the actual crisis.

The Presidency explained that the issue had been largely dealt with during several meetings of the Visa Working Party in Council, confirmed in writing by delegations and most recently discussed at the meeting on 26-27 September 2016, where a vast majority of delegations, while not against the idea of helping people in need of international protection, were strongly opposed to including a humanitarian visa in the Visa Code. Delegations in particular were concerned that consulates would not be competent to process a "pre-asylum procedure" before issuing the humanitarian visa.

II. Suggestion by the Presidency

The humanitarian visa is the main outstanding issue in the file and constitutes at the same time a red line for the EP, the Member States and the Commission.

The Presidency proposes, in light of that situation, the following with a view to further contacts with the EP :

¹ Proposal for a Regulation of the EP and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council (See doc. 11313/16).

- a) The EP accepts not to include the humanitarian visa in the Visa Code and the issue is addressed in a Joint statement by the three institutions. The statement would provide for a commitment to examine the idea of the EP to develop legal avenues to come to EU for persons in need of international protection further, including in the context of the resettlement proposal. The part on the link to readmission is kept. This would pave the way for reaching a final agreement.
- b) If the approach under a) turns out not to be possible, the draft Regulation on the Visa Code recast would temporarily be put on hold. The matter raised by the EP would be further examined in the framework of the legislation on asylum, including in the context of the resettlement proposal with a view to coming back to the Visa Code recast and reach agreement on it at a later stage.

III. Conclusion

The Permanent Representatives Committee is invited to determine if it can agree to the above way forward.
