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LIMITE

VISA 408
COMIX 837

OUTCOME OF PROCEEDINGS

From: Visa Working Party/Mixed Committee
(EU/Iceland, Norway and Switzerland, Liechtenstein)
On: 7 December 2016
Subject: Summary of discussions

1. Proposal for a Regulation of the European Parliament and of the Council on the Union Code on Visas (Visa Code) (recast)

The Chair reminded the Working Party about the decision taken at Coreper on 17 November 2016 on the future handling of this file. In that context, the Chair reported that the European Parliament (EP) had recently sent the Presidency the four-column table containing new compromise proposals from the Rapporteur, in which the provisions on the humanitarian visa had been maintained. Furthermore, the Chair reported that the Rapporteur had let the Presidency know that he would not agree to put the humanitarian visa on hold and wanted to continue negotiations on the other outstanding issues.

AT, FR, BE, NL, HU, SE, SI, ES and PT were against continuing negotiations, as Coreper had been very clear on the conditions to do so.

The Chair announced that a trilogue would be held to formally inform the EP of the Council's decision. COM said that the Commission was attached to its proposal but was also against the idea of a humanitarian visa.

2. Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1683/1995 of 29 May 1995 laying down a uniform format for visas

The Chair informed the Working Party of the outcome of the first trilogue, held on 29 November 2016. The EP accepted the proposed changes in the Annex, but called for an implementation period of nine months instead of fifteen. On the issue of whether this draft Regulation must be considered as Schengen *acquis* in the sense of Protocol 19 to the Lisbon Treaty or not, the Chair reported on the arguments put forward by the legal services of the institutions and said that no agreement had been found.

With a view to reaching a compromise with the EP, the Chair suggested reverting to the Commission's original proposal, which considers the draft Regulation to be a hybrid legal act (Schengen *acquis* in the sense of the association agreements/Protocol 21 applicable to Ireland and the UK) and refers to an implementation period of 12 months.

The Council Legal Service (CLS) maintained its opinion that the proposed Regulation is a development of the Schengen *acquis* and is subject to Protocol 19 and not to Protocol 21. Moreover, CLS recalled that on 13 April 2016 Coreper, following the advice of the CLS, had agreed on the mandate for negotiations with the EP on that basis.

IE and UK disagreed with CLS and said that, since they were bound by Regulation (EC) No 1683/95, they should also participate in the current amending Regulation, if only for security reasons. Therefore, IE and UK strongly supported reverting to the Commission's original proposal. AT and CY supported IE and UK's views.

NL, BE and LU suggested replacing the words '*as set out in box 3*' in point 6 of the Annex to the draft Regulation by '*as set out in ICAO Document 9303*' since, for the Benelux countries, box 3 should contain the acronym BNL and not the three letter country code.

Concerning the implementation period, NL, CZ, SE, AT, MT and NO could accept 12 months. BG, supported by HU and EE, agreed that the implementation period (Article 3) could be lowered to 12 months if the transitional period (Article 2) were raised to nine months, instead of six. However, FR, BE, LT, RO, EL, DK, SI, HU, PT and HR considered that a 15-month period would be needed for practical reasons linked to the development of the new sticker.

COM stated that the draft Regulation had to be kept as a hybrid measure to allow IE and UK to participate, excluding the possibility of providing the technical specifications to Ireland without an opt-in from that Member State, and asked the CLS for a written position. COM also stressed the necessity of adopting the Regulation swiftly, given the recent significant increase in cases of visa sticker forgery, and of sticking to a transition period of six months. As regards the implementation period, COM stated that a period of nine months should be feasible, since all technical tests for producing visa stickers had already been carried out and could be delivered at short notice.

The Chair concluded by reiterating the need to find a flexible and pragmatic approach, including for IE, and asked delegations to send in written comments by 14 December 2016.

3. Proposal for a Regulation of the European Parliament and of the Council amending 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 (revision of the suspension mechanism)

The Chair informed delegations about the outcome of Coreper the same day and announced that a trilogue would be held in the afternoon, hopefully followed by a positive vote in LIBE on 8 December 2016.

4. Visa Information System (VIS)

COM presented a summary of the replies from delegations to the questionnaire on possible future developments of VIS sent round in advance by the Commission. COM explained that an impact assessment would be carried out at a later date, once the legal proposal had been tabled.

Furthermore, COM reported that eu-LISA was already preparing technical studies on the feasibility of certain changes. COM announced that a consolidated table of delegations' replies would be circulated to share everyone's ideas and thus contribute to the debate. Furthermore, COM believed that a meeting might be needed for an in-depth discussion of the issues with delegations before moving on.

eu-LISA confirmed they had started assessing the impact of the proposed changes and requested more information.

The Chair concluded by asking those delegations that had not yet responded to send in their comments in writing, and said that the issue would be discussed further early the following year.

5. Draft Council Decision on the putting into effect of certain provisions of the Schengen acquis relating to the Visa Information System (VIS) and of remaining provisions of the Schengen Information System in the Republic of Bulgaria and in Romania

The Chair presented 15294/16.

BG pointed out that passive access to the VIS was not linked to the discussions on the entry/exit system (EES)¹ but was related to unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for transit through or intended stays on their territories (see Decision No 565/2014/EU of the European Parliament and of the Council of 15 May 2014). Since Bulgaria recognises Schengen visas as equivalent to national visas, it must therefore be able to check the holders of those visas against the VIS. Finally, as regards the date of application referred to in Article 1(1) of the draft Decision, BG assured the meeting that Bulgaria would be ready by 22 April 2017. RO was of the opinion that no date should be mentioned in that Article, since the decision on technical readiness should be left to eu-LISA. RO recalled that in the framework of Schengen evaluation, Romania had passed all technical tests successfully. Furthermore, RO asked when and to what extent Romania would have access to VIS Mail.

SE, CZ, DE and FR entered scrutiny reservations. FR said that it could support the principle of the draft Decision. CZ said that the issue had to be looked at horizontally, in the framework of the whole Schengen acquis. SE considered that the Working Party for Schengen Matters/Schengen acquis would be a better forum to examine the issues related to Bulgaria and Romania. Furthermore, SE said that the solution proposed had to be studied in detail. Therefore, SE asked for an impact assessment and wondered about the implications in other areas. CY pointed to the fact that the same rationale could also be applied to CY and HR.

COM said that it did not have enough time to scrutinise the whole text of the draft Decision, and made the following comments:

- On the use of the concept of 'retrieval': the Commission has a position of principle against it, as it does not exist in the VIS and cannot have legal value until the act in which it is defined (EES Regulation, see above) is adopted and enters into force;

¹ Proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011 (see 7675/16).

- On the inclusion of VIS Mail provisions in the list of applicable provisions (except for one possible vague application on the basis of Article 38(2)): there is no use possible for read-only access;

- On the acts listed in the Annex:

* Article 21(2), Article 37(1) and Article 43(5) of the Visa Code: it is unclear for the Commission why these provisions were chosen;

* Regulation (EU) No 1077/2011: the Commission considers it as already applicable;

* Decision 512/2004: the Commission considers it as already applicable on the basis of the Act of Accession, and its two implementing decisions, Decisions 602/2008 and 648/2006;

The Chair invited delegations to submit any comments they might have by 14 December 2014.

6. AOB

a) Pilot project in Greece

EL presented the results of the 'Project for short-stay tourist visits with simplified entry procedures for third-country nationals travelling from Turkey to certain Greek islands' ('pilot project'), which Greece conducted from 1 June to 31 October 2016, issuing short-stay visas with limited territorial application to holders of Turkish ordinary travel documents and to any other third country nationals who are subject to the visa obligation and who do not fall within a category of persons for whom prior consultation is required, for visits operated by daily cruises and/or ferry boats from Turkish ports to seven neighbouring islands in the Aegean Sea. EL considered the programme to have been a success, since it promoted tourism, particularly on those islands most affected by the migration crisis.

PL, FR and SE asked EL to provide them with a written report. FR, BE and SE raised security concerns about the pilot project, which had been run for the fifth time despite reservations raised by several Member States and without a legal basis. SE suggested that the Commission assess the project. BE recalled that Article 33 of the Visa Code recast (visas applied for at the external border under a temporary scheme) had been rejected and deleted in the mandate for the negotiations with the EP. COM, after recalling that the Commission had given its approval to the project, noted that the Commission had assessed the project throughout the implementation period and that no irregularities had been detected. However, taking note of delegations' views on the formal legal basis in the Visa Code recast, COM said that against that background it would be difficult to imagine the project being run again.

b) Presentation of the incoming Maltese Presidency

MT presented its team and its work programme for the first half of 2017.
