

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING A COMMUNITY CODE ON VISAS

Grounds for and objectives of the proposal

Within the closer Schengen cooperation, a common visa policy was identified as a fundamental component of the creation of a common area without internal border controls.

The Schengen acquis on visa policy, including the Common Consular Instructions (CCI), which were drawn up in the framework of the Schengen intergovernmental cooperation, was incorporated into the institutional and legal framework of the European Union following the entry into force of the Treaty of Amsterdam. The Schengen provisions on visa policy have been allocated a legal basis (Article 62(2)(b)) and are therefore full part of Community law).

The CCI are currently the basic instrument governing the procedures and conditions for the issuance of short-stay visas, transit visas and airport transit visas, although certain principles also appear in the Schengen Convention itself and a number of provisions feature in other separate decisions.

The Hague Programme "underlines the need for further development of the common visa policy as part of a multi-layered system aimed at facilitating legitimate travel and tackling illegal immigration through further harmonisation of national legislation and handling practices at local consular missions."

To this end, among other measures, the Commission was invited "to review the Common Consular Instructions". In order to meet the objectives of the Hague Programme and reinforce the coherence of the common visa policy on the issuance of the above-mentioned types of visas, the proposed Regulation:

- incorporates all legal instruments governing decisions in relation to visas into one Code on Visas,
- develops certain parts of the current legislation in order to take account of recent developments and new dimensions of the visa issuance process and to fill in existing gaps;
- enhances transparency and legal certainty by clarifying the legal status of the provisions of the CCI and its annexes by removing provisions that are redundant or of a practical operational nature from the legal instrument;
- strengthens procedural guarantees by laying down rules on the mandatory motivation of refusals of visa applications;
- reinforces the equal treatment of visa applicants by clarifying a number of issues in order to enhance the harmonised application of the legislative provisions.

GENERAL CONTEXT

The issuance of short-stay visas is currently governed by various legal instruments, as set out in the chapter below. Thus the "reviewing" exercise will simplify the legal framework, as the common visa policy will henceforth be governed by the four legal instruments listed below:

- Regulation (EC) No 539/2001 of 15 March 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 (legal basis: TEC 62(2)(b)(i));
- Council Regulation (EC) No 1683/95 of 29 May 1995 laying down the uniform format for visas (legal basis: TEC 62(2)(b)(iii));
- Council Regulation (EC) No 333/2002 of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form (legal basis: TEC 62(2)(b)(iii));
- the present Regulation establishing a Code on Visas (legal basis: TEC 62(2)(a), (b)(ii) and (iv) and 62(3)).
- the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders (in particular articles 9-18, which lay down common and uniform principles in that field);
- Council Regulation No 415/2003 of 27 February 2003 on the issue of visas at the border, including the issue of such visas to seamen in transit;
- the Common Consular Instructions on visas for the diplomatic missions and consular posts (CCI) which set out detailed rules for implementing these principles and bring together nearly all provisions related to the issuance of short-stay visas;
- Council Regulation (EC) No 1091/2001 of 28 May 2001 on the freedom of movement with a long-stay visa;
- Decisions of the Schengen Executive Committee (SCH/Com-ex (93) 21, SCH/Com-ex (93) 24, SCH/Com-ex (94) 25, SCH/Com-ex (98) 12 and SCH/Com-ex (98) 57;
- Joint Action 96/197/JHA of 4 March 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union sets out arrangements for airport transit visas.

Consistency with the other policies and objectives of the Union

In the review and amendment of current rules on the issuance of visas, account has been taken of the recently adopted Schengen Borders Code in order to ensure coherence in legislation.

Processing of visa applications should be conducted in a professional and respectful manner and be proportionate to the objectives pursued. While performing their tasks, consular staff shall not discriminate against persons on any of the following grounds: sex, racial origin, religion or belief, disability, age or sexual orientation.

LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

By incorporating all legal instruments governing the conditions and procedures for issuing visas into one Code on Visas, enhancing transparency and clarifying existing rules, introducing measures intended to increase the harmonisation of procedures, strengthen legal certainty and procedural guarantees, a full common policy with equal treatment of visa applicants is ensured.

- **Detailed explanation of the proposal**

1. Incorporation into one Code on Visas of all provisions governing the issuance of visas and decisions in relation to refusal, extension, annulment, revocation and shortening of visas issued

1.1. Airport Transit Visa (ATV)

The provisions of the Joint Action, mentioned above, are contained in the CCI, to which the lists of nationals who are subject to this requirement are annexed. In order to enhance transparency and harmonisation the large number of - generally identical - "unilateral" exemptions of certain categories of persons from this requirement have been harmonised.

In order to achieve the general objective of harmonisation of all aspects of visa policy, the possibility for individual Member States to impose an ATV requirement on certain nationalities has been abandoned.

1.2. The issuance of visas at the border

Council Regulation (EC) No 415/2003 on the exceptional issuance of visas at the border, including the issuance of such visas to seamen in transit has been integrated into this Regulation.

1.3. Annulment and revocation of the validity of a visa

Currently the rules on annulment and revocation of the validity of an issued visa are contained in SCH/Com-ex (93) 24 and in the CCI, Annex 14, section 2. All of these provisions have been merged into two separate articles, which clearly define which authorities are responsible for these tasks.

1.4. Extension of an issued visa

A third-country national present in the territory of the Member States on the basis of a valid visa, may have justified reasons for remaining beyond the date of expiration of his/her initial visa. The rules governing such situations (SCH Com-ex (93) 21) have been rendered more visible and a harmonised approach has been proposed, i.e. extensions should only take the form of a stamp, corresponding to the model contained in an annex to the Regulation, as such extensions are in most cases granted by Member States' national authorities, who are unlikely for reasons of security to hold stocks of the highly secured visa stickers.

1.5. Exchange of statistics

Given the fact that analysis of statistics in relation to the number of visas issued and of refusals is a valuable management tool at both local and central level the regulation establishes that such information shall be exchanged in a common format shall be notified to the Commission twice a year (the Commission will be responsible for publishing the data) and within each jurisdiction every month. Despite the existence of two SCH/Com-ex decisions on the exchange of statistics ((94) 25 and (98) 12) useful and comparative data on the number of visas issued and refused do not exist currently.

2. New dimensions of the visa issuance procedure

The establishment of the Visa Information System on the exchange of data between Member States on short-stay visas (VIS) will fundamentally change the processing of visa applications. On the one hand, Member States will automatically gain access to information on all persons having applied for a visa (within the 5-year period of

retention of data) which will facilitate the examination of subsequent visa applications. On the other hand, the introduction of biometric identifiers as a requirement for applying for a visa will have a considerable impact on the practical aspects of receiving applications.

As the VIS should become operational already 2007, the Commission has chosen to update the CCI in a separate legal proposal, which sets the standards for the biometric identifiers to be collected and provides for a series of options for the practical organisation of Member States' diplomatic missions and consular posts for the enrolment of visa applicants as well as for a legal framework for Member States' cooperation with external service providers.

The contents of that proposal are inserted into and adapted to the structure of the present proposal, which will be amended once negotiations on the separate proposal have been finalised.

The provisions for the cooperation with commercial intermediaries, such as travel agencies and tour operators, have been strengthened, in order to take account of this new situation (see below).

3. Developing certain parts of the acquis

3.1. Enhanced transparency and reinforcement of the equal treatment of visa applicants

Specific provisions on Member States' obligation to provide the general public with all relevant information in relation to the issuance of visas have been introduced. Moreover, provisions have been added, introducing:

- a) a maximum issuing time
- b) a clear distinction between inadmissible applications and formally refused applications
- c) full transparency as to the list of third countries whose nationals are subject to prior consultation
- d) shorter deadlines for the response time in the case of prior consultation
- e) a harmonised form providing proof of invitation, sponsorship and accommodation
- f) an obligation for Member States to notify and motivate negative decisions
- g) a legal framework to assure a harmonised approach to cooperation both between Member States' diplomatic missions and consular posts and with external commercial service providers
- h) mandatory rules for the cooperation between Member States' diplomatic missions and consular posts with commercial intermediaries.

3.1.1. Prior consultation

While acknowledging that Member States' central authorities may have legitimate reasons for wishing to be consulted before visas are issued to nationals of certain third countries or to specific categories of these nationals, the Commission proposes speeding up the current procedure for prior consultation in the light of technical developments (faster access to and exchange of information) and in order to avoid prolonging the processing of visa applications unnecessarily and prevent adverse side effects such as "visa shopping".

It should be recalled that the designation of additional third countries for such compulsory prior consultation has on numerous occasions given rise to political discontent on the part of

the third country concerned. Given that in most cases only one or a few Member States require to be consulted, this penalises the remaining Member States as they have to await replies from the consulted Member State before a final decision can be taken on the visa applications. Finally, certain Member States have provided proof that the added value of the prior consultation procedure in terms of objection to the issuance of a visa is very limited.

In order to avoid some of these adverse effects, the Commission suggests substantially shortening the deadlines for responding to consultations, and introducing the possibility for a Member State to request to merely be informed of visas issued to nationals of certain third countries or specific categories of these nationals, as some Member States have stated that the primary objective of consultation is for their central authorities to be informed of issuances rather than requesting refusals.

In order to enhance transparency, the Commission favours declassifying the lists of third countries subject to prior consultation, which are currently classified as "EU RESTREINT". The confidentiality of this annex to the CCI is only relative, as in practical terms the length of the processing time for applications by certain categories of persons reveals which third countries are listed. Furthermore the contents of these classified Annexes are already available to the public via websites of Member States' diplomatic missions or consular posts.

Finally, it could be questioned whether once the VIS is operational, and despite the fact that the VIS is not equipped with an alert function, there will be the same need for maintaining the consultation procedure, as central authorities of individual Member States will have access to information on all visas issued by all other Member States.

3.1.2. Inadmissibility

Currently, there is no clear distinction between those visa applications that have been formally refused after full examination of the file and cases where such in-depth examination was not carried out because the applicant failed to provide additional information. The Regulation introduces the notion of "inadmissibility", to be indicated in the VIS as distinct from a formal refusal.

3.1.3. Harmonised rules in relation to refusals

Currently the notification and motivation of refusals are governed by Member States' national legislation with the result that some neither notify nor motivate grounds for refusal to the applicant, whereas others only motivate refusals of certain categories of applicants. The recently adopted Schengen Borders Code introduces provisions requiring the relevant authorities to substantiate decisions on refusal of entry, stating the precise reasons by means of a standard form to be given to the refused third-country national.

For reasons of transparency and equal treatment of visa applicants and in order ensure coherence in related legislation, the common visa policy must also cover this crucial issue. To this end, provisions have been introduced rendering it mandatory for Member States' diplomatic missions and consular posts both to notify and indicate grounds for refusal in all cases.

3.2. Harmonisation of practices at operational level

3.2.1. Stamp indicating that an application has been lodged

Despite the existence of common rules on the use of the stamp indicating that an application has been lodged as well as on the content of this stamp, practices vary significantly. Thus, provisions have been introduced to cover both aspects, thereby ensuring a harmonised implementation.

3.2.2. Harmonised form providing proof of invitation, sponsorship and accommodation

The CCI, Annex 15, contains "harmonised" forms, but only three Member States have forwarded specimens, the contents of which differ. This Regulation introduces a harmonised form to be used by all Member States.

3.3 Local Consular Cooperation - strengthening of the harmonised application of the common visa policy

While acknowledging that the core legislation is directly applicable by Member States, the Commission is also aware that the diversity of individual cases and local conditions makes it very difficult to draw up detailed rules valid in all circumstances and covering all situations. This is why the current acquis already acknowledges the essential role played by diplomatic and consular posts, in particular in assessing migratory risk (it should be noted that this particular aspect of the current acquis was reinforced by a legislative amendment in 2003).

On the basis of the findings of the targeted missions on local consular cooperation (2004-2005) in particular, a proper legal framework for local consular cooperation has been drawn up establishing the tasks to be carried out at local level and ensuring the essential link to the relevant central authorities and Council and to guarantee transparency. This new organisation of LCC also takes into account the Community institutional framework.

4. Clarification of certain issues in order to enhance the harmonised application of legislative provisions

- Visa with Limited Territorial Validity (LTV)

Currently the provisions concerning LTV visas are split between different articles in various legal instruments (the Schengen Convention and the CCI). This has led to uncertainty as to the conditions for issuing this type of visa and to a certain degree of misuse and varying practices among Member States. Furthermore, it appears that both at operational and at central level there is little awareness of the scope of the obligation to inform other States of LTV visas issued. All provisions concerning the issuance of LTV visas have been integrated into one article, and the requirement to inform other Member States of the issuance of LTV visas has been restricted to those cases where the reason for issuing a visa with limited territorial validity is the negative response from a Member State within the procedure for prior consultation or when a visa is issued to a third-country national who does not meet the entry conditions laid down in the Schengen Borders Code.

- Travel Medical Insurance (TMI)

Council Decision 2004/17/EC as regards the inclusion of the requirement to be in possession of a travel medical insurance as one of the mandatory supporting documents for the grant of a uniform visa entered into force on 1 June 2004. As the application of this new measure was rather problematic in a number of locations, among other things because of loopholes and ambiguities in the original Decision, additional guidelines for the application of the Decision were drawn up in October 2004. This Regulation clarifies the ambiguities of the original text and turns some of the additional guidelines into binding rules. Based on the analysis of Member States' replies to a questionnaire on the application of the travel medical insurance requirement (circulated in October 2005), the Commission proposes a streamlining and clarification of the provisions on this matter. Moreover, persons being - exceptionally - granted a visa at the border, seafarers, when exercising their profession, as well as persons holding diplomatic passports and person applying for airport transit visa are systematically exempted from this requirement. In the first case the urgent circumstances in which such persons apply for a visa render it disproportionate to require them to contract a travel medical insurance. As far as seafarers are concerned they are generally sufficiently covered by means of their work contract to comply with the Community provisions.

5. Clarification of the legal status of the annexes to the CCI

The current Common Consular Instructions contain eighteen annexes including a number of legal provisions and various pieces of information, based on other legal sources or notifications by Member States: lists of third-country nationals subject to visa requirements, exemptions for holders of certain types of travel documents, table of representation, documents entitling the holder to entry without a visa, technical specifications (specimen of visa stickers, harmonised forms providing proof of invitation etc.), practical operational information (guidelines for filling in the visa sticker), information on individual "practices" (reference amounts, information to be entered into the "comments" section).

In order to clarify the legal status of these annexes, the Commission has decided, as was the case with the recent recast of the Common Manual, only to keep those annexes that are directly linked to the implementation of the provisions contained in the body of the text, namely annexes I-XIII to the Regulation. These annexes will, in future, be subject to amendment via a committee procedure, in accordance with Article 202 of the EC Treaty and Council Decision 1999/468/EC, as the Commission considers that these practical provisions are in fact measures implementing the principles set out in Title V of the Regulation.

6. Deletions

6.1. National visas

As the Regulation concerns the issuance of Schengen short-stay and transit visas as well as airport transit visas, all reference to national visas ("D" visas) has been deleted.

6.1.2. Long-stay national visa valid concurrently as a short-stay Schengen visa ("D+C" visas)
This type of visa was introduced on the basis of a Member State's initiative in 2001 (Regulation (EC) No 1091/2001. The "D+C" visa is valid concurrently as a uniform short-stay visa for a period of not more than three months from its initial date of validity. On the basis of available information, it appears that most Member States either do not issue D+C visas at all or only issue very small numbers¹. It has also been noted on numerous occasions that there is little or no knowledge at all among consular staff of this type of visa or the conditions under which it can be issued, and thus applicants are not informed of this possibility. Moreover, it has been established that in many cases the national visa registration and processing programmes do not even allow for the possibility of considering applications for such a visa or the printing of the visa sticker. At the same time a number of Member States allow their diplomatic missions and consular posts to issue residence permits, thus rendering the D+C visa superfluous. Moreover, once the period of three months from the initial date of validity of the D+C visa has expired, the holders - by then legally present on the territory of the Member State that has issued the visa - are no longer allowed to circulate within the entire territory of the Member States.

Therefore, the Commission proposes to abolish this type of visa in order to simplify matters and require Member States to speed up the issuance of residence permits to those third-country nationals entitled to receive them.

6.2. Abolishment of group visas

With the introduction of biometric identifiers as part of the data to be provided by visa applicants and the registration of individual applicants in the VIS, it is not possible to maintain the possibility of a group visa. Each applicant, even spouses and children travelling on the same

¹ According to visas statistics for 2004 (doc. 9749/05), Member States issued 1 017 348 "D" visas and only 20 938 "D+C" visas.

passport, must fill in individual application forms and individual visa stickers must be issued by means of the separate sheet for affixing visas.

6.3. "Removal" of Annex 2 to the CCI

It is recalled that Annex 2 of the CCI contains the list of third countries, listed in Annex I to Regulation (EC) No 539/2001, whose nationals are exempt from visa requirements when holding "diplomatic, official and service passports" and the list of third countries, listed in Annex II to Regulation (EC) No 539/2001, whose nationals are subject of visa requirements when holding "diplomatic passports, service/official and special passports". Currently Regulation (EC) No 789/2001 governs the procedures for Member States' notification of amendments to Annex 2 despite the fact that the legal basis for Member States' unilateral exemptions is Regulation (EC) No 539/2001, which states that information on the exemptions pursuant to Article 4 of that Regulation shall be notified to the Commission (who is responsible for timely and regular publication of this information). In order to avoid the overlapping of procedures and as there is no legal link between the exceptions from the visa requirement under (EC) Regulation No 539/2001 and the Regulation on the Code governing the conditions and procedures for issuing visas this information is not be annexed to the Code on Visas.

6.4. Deletion of Annex 6

According to the rules proposed for access to data in the VIS regulation, honorary consuls shall no longer be authorised to issue visas.

7. Harmonised application at operational level of the "Code on Visas"

As mentioned above, the Code on Visas shall only contain legal provisions on the issuance of short-stay and transit visas as well as airport transit visas. In order to ensure that Member States henceforth refrain from their current practice of drawing up national instructions to "superimpose" the common rules, one single common set of instructions on the practical application of the legislation shall be drawn up.

While preparing the proposal on the Code on Visas, the Commission in parallel considered the format and content of the practical "Instructions on the practical application of the Code on Visas" establishing the harmonised practices and procedures to be followed by Member States' diplomatic missions and consular posts when processing visa applications.

These Instructions, which will be drawn up within the procedure provided for in Title V of the Regulation, will by no means add any legal obligations to the Visa Code but be of a purely operational nature. They shall be finalised by the date of entry into force of the Code.

General comment

In order to take account of the Community framework and terminology the term "Contracting Party(ies)" has been replaced by "Member State(s)" in the definitions and throughout the proposal. Obviously, references to "Member State(s)" should be read in the light of, firstly, the Schengen Protocol, as regards the application of the Schengen acquis by the United Kingdom and Ireland and, secondly, Article 3 of the Treaty of Accession providing for the application of the Schengen acquis by the new Member States in two stages. In addition, the special position of Norway, Iceland and Switzerland with respect to the Schengen acquis must also be taken into account.