Community Code on Visas (Visa Code)

2006/0142(COD) - 02/04/2009 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 569 votes to 50, with 32 abstentions, a legislative resolution amending, under the first reading of the codecision procedure, the proposal for a regulation of the Council and of the European Parliament establishing a Community Code on Visas.

The amendments were the result of a compromise negotiated with the Council. They may be summarised as follows:

Objectives and scope: the regulation seeks to lay down procedures and conditions for the issuing of visas of **short-stay visas** (3 months) and **transit visas**. It will apply to any third-country national who must be in possession of a visa when crossing the external borders of the Member States and will determine the third countries whose national are required to hold a visa (including an airport transit visa), with the exception of free transit visas, as provided for in the Chicago Convention on International Civil Aviation.

Airport transit visa: the compromise adds a new sub-heading to the regulation on airport transit visas and specifies the third-country nationals required to hold such visas. The compromise includes a provision which states that certain categories of persons shall be exempt from the requirement to hold an airport transit visa. These are: i) holders of a valid uniform visa, national long-stay visa or residence permit issued by a Member State; ii) third-country nationals holding valid residence permits issued by Andorra, Canada, Japan, San Marino or the United States of America, according to specific provisions; iii) third-country nationals holding a valid visa for a Member State or for a State party to the Agreement on the European Economic Area, Canada, Japan or the United States of America, or when they return from these countries after having used the visa; iv) family members of citizens of the Union; v) holders of diplomatic passports; vi) flight crew members who are nationals of a contracting Party to the Chicago Convention on International Civil Aviation.

Procedures and conditions for the issue of visas: new provisions are provided for in regard to the conditions for the issue of visas. In principle, only consulates shall examine and decide on a visa application. However, by way of derogation, applications may be examined and decided on at the external borders of the Member States by the authorities responsible for checks on persons.

Consular territorial competence: the compromise lays down the rules regarding the Member State that is competent to examine and decide upon an application, including for airport transit visas. In principle, the Member State responsible for the issue of the visa will be the Member State whose territory constitutes the main destination of the visit. The Member States are called upon to cooperate in such a way as to ensure that each application is examined (see ‘cooperation agreements’).

Multiple entry visas for frequent travellers: the compromise also makes provision, provided that certain conditions are fulfilled, that multiple-entry visas be issued in order to lessen the administrative burden of Member States’ consulates and to facilitate the smooth traveling for frequent or regular travellers. Applicants known to the consulate for their integrity and reliability should, as far as possible, benefit from a simplified procedure.

Arrangements on representation: the compromise also allows for one Member State to represent another for the purpose of examining applications and issuing visas on behalf of that Member State. A Member State may also represent another Member State (in a limited manner solely for the collection of applications and the enrolment of biometric identifiers). The consulate of the representing Member State shall, when envisaging the refusal of a visa, submit the application to the relevant authorities of the

represented Member State in order for them to take the final decision. In any event, an arrangement shall be established between the representing Member State and the represented Member State laying down the conditions for the cooperation between the parties, the purpose being that Member States not having a consulate in a third country conclude arrangements on representation with other Member States that do have them. In addition, with a view to ensuring that poor transport infrastructure or long distances in a specific region or geographical area do not require a disproportionate effort on the part of applicants to have access to a consulate, the Parliament invites Member States lacking their own consulate in that region or area to conclude arrangements on representation with Member States that have consulates in that region or area.

Practical modalities for lodging an application: applications shall be lodged no more than 3 months before the start of the intended visit. Holders of a multiple-entry visa may lodge the application before the expiry of the visa valid for a period of at least 6 months. Applicants may be required to obtain an appointment for the lodging of an application. There are some new provisions relating to the lodging of applications, such as the presentation of the application form, and the documents necessary for the granting of the visa.

Biometric identifiers: contrary to the position taken by the parliamentary committee which had deleted these provisions so as to establish a special legal instrument for the purpose, the compromise reached during the plenary session reintegrates the basis provisions relating to identifiers. Certain applicants will, however, be exempt from the requirement to give fingerprints, in particular, children under 12.

Supporting documents: a series of new supporting documents are provided for, including, in particular, documents in relation to accommodation, or proof of sufficient means of the applicant to cover accommodation costs. In the case of airport transit visas, certain supporting documents are also required. The plenary has reintegrated within the text the principle whereby an applicant may be required to present a proof of sponsorship and/or private accommodation by means of a form (contrary to the position of the parliamentary committee).

Travel medical insurance: the compromise also provides for the requirement for applicants to prove that they are in possession of adequate and valid travel medical insurance to cover any expenses which might arise in connection with repatriation for medical reasons, or death in the case of multi-entry uniform visas. The minimum coverage shall be EUR 30 000.

Visa fee: contrary to the position taken by the parliamentary committee, the compromise reached during plenary provides for the payment of a visa fee of EUR 60 (rather than EUR 35) when the application is lodged. Children from the age of 6 and below the age of 12 shall pay a visa fee of EUR 35 (or may be completely exempted if the consular representation so authorises). A series of applicants will be completely exempted from a visa fee (e.g. children under 6, participants in seminars and conferences aged less than 25 or those attending sporting, cultural or educational events organised by non-profit organisations). Overall the visa fee should be regularly reviewed to take account of Member States' administrative costs. Moreover, an additional service fee may be charged to cover the costs incurred by an external service provider while performing one or more of the consular tasks.

Rights flowing from an issued visa: the mere possession of a uniform visa or a visa with limited territorial validity does not confer an automatic right of entry. Members of the parliamentary committee responsible were of the contrary opinion that persons in possession of a visa should benefit from an automatic right as long as they fulfilled the conditions laid down by EU legislation (Schengen Borders Code, …).

Cooperation with regard to visa applications and use of external service providers: in contrast to the position of the parliamentary committee responsible, the plenary reincorporated a series of measures on cooperation between Member States for the processing of visa applications. A new article deals with

assistance for honorary consuls. Lastly, recourse to an external service provider by one or jointly by several Member States is provided for (but will be subject to a separate legal instrument). The plenary also specifies the type of tasks that can be delegated to external service providers.

Encryption and secure transfer of data: new provisions were agreed in the case of data transfer between competent authorities, as a result of representation arrangements between Member States, cooperation between Member States and a service provider or recourse to honorary consuls.

Statistics: the compromise provides for a new article on statistics stipulating that the Member States shall compile annual statistics on visas to be submitted by 1 March of each year.

Website: the compromise also provides for the creation of an internet site dealing with Schengen visas to improve the visibility and a uniform image of the common visa policy. This site will serve as a means to provide the general public with all relevant information in relation to the application for a visa.

Amendments to the VIS Regulation: at the same time as the introduction of the visa code, a series of related amendments will be made to the VIS Regulation.

Evaluation: the compromise provides for the revision of the regulation in the 2 years that follow its entry into force. Provision is made for other evaluations to be undertaken at regular intervals thereafter which may result, if appropriate, in the modification of the regulation itself.

It should also be noted that some changes were also made to the annexes in relation to the amendments made to the main body of the text.