

Community Code on Visas (Visa Code)

2006/0142(COD) - 13/07/2009 - Final act

PURPOSE: to establish the Community Code on Visas.

LEGISLATIVE ACT: Regulation (EC) No 810/2009 of the European Parliament and of the Council establishing a Community Code on Visas (Visa Code).

BACKGROUND: until now, the issuance of visas has been governed by a number of different legal instruments making the overall provision less coherent and transparent than it ought to be. It is for this reason that it has been deemed necessary to incorporate all legal instruments governing the conditions and procedures for issuing visas into one Code on Visas. This will enhance transparency and clarify existing rules, introduce measures intended to increase the harmonisation of procedures, strengthen legal certainty and procedural guarantees. A full common policy with equal treatment of visa applicants shall be ensured.

Overview: this is a major step to further develop a common visa policy and to reinforce cooperation in the Schengen area. To recall, the third countries whose nationals must be in possession of visas when crossing the external borders of the Schengen area and those whose nationals are exempt from that requirement are listed in [Council Regulation \(EC\) No. 539/2001](#). The Visa Information System ([VIS](#)) is a database where alphanumeric data and biometric identifiers of the visa applicants are recorded. It aims at improving the system for issuing visas throughout the Schengen area. Currently, it is being implemented at Member State level and should be operable at a central level also by the end of 2009/beginning of 2010. A Community Code on Visas is deemed necessary to enable the competent authorities (diplomatic representation and Member State Consuls, etc) to apply in a harmonised and rational manner the applicable measures. The Code will replace the Common Consular Instructions (CCI).

CONTENT: following an agreement reached with the European Parliament at first reading, the Council adopted this Regulation establishing the procedures and conditions for issuing visas for transit through or intended stays in the territory of the Member States not exceeding three months in any six-month period. The provisions of the Regulation shall apply to any third-country national who must be in possession of a visa when crossing the external borders of the Member States pursuant to Council Regulation (EC) No 539/2001 without prejudice to:

- the rights of free movement enjoyed by third-country nationals who are family members of citizens of the Union;
- the equivalent rights enjoyed by third-country nationals and their family members, who, under agreements between the Community and its Member States, on the one hand, and these third countries, on the other, enjoy rights of free movement equivalent to those of Union citizens and members of their families.

The Regulation also lists the third countries whose nationals are required to hold an airport transit visa by way of exception from the principle of free transit laid down in Annex 9 to the Chicago Convention on International Civil Aviation, and establishes the procedures and conditions for issuing visas for the purpose of transit through the international transit areas of Member States' airports.

The Regulation brings together all legal instruments concerning visa decisions and increases transparency and legal security for applicants. It replaces the Common Consular Instructions.

The main points are as follows:

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the Regulation clarifies which Member State is responsible for processing a visa application and defines the different phases for examination and decision taking;

- it includes new provisions allowing for multiple-entry visas under certain conditions;
- it lists the documents a visa applicant needs to submit and the procedures for their verification;
- it harmonises the fees that can be charged and sets common standards for the service provided. The decision must respect the principle of non-discrimination. A decision should be taken within 15 calendar days;
- the Regulation requires Member States to give refused applicants the reasons for refusal and gives applicants the right to appeal.

Application documents and fees: as a general rule, applicants must appear in person when lodging an application. They need to turn in a number of documents: an application form, a valid travel document, a photograph, a document indicating the purpose of the journey, proof of sufficient means to cover accommodation and subsistence, proof of travel medical insurance as well as information enabling an assessment of the applicant's intention to leave the Schengen territory before the expiry of the visa.

At the time of submission of the first application, Member States should also collect fingerprints and introduce them - along with the photograph - into the Visa Information System (VIS). The visa fee is set at EUR 60 for persons from the age of 12 and older and EUR 35 for children between six and eleven. For children under six as well as school pupils coming to Europe for the purpose of study, researchers and representatives of non-profit organisations under 25 participating in seminars, conferences, sports, cultural or educational events visas are free. The visa fee may also be waived for children between six and eleven. An additional service fee may be charged by an external service provider.

Uniform visas: responsibilities, examination procedure, deadlines and right to appeal: for uniform visas, i.e. for visas valid for the entire territory of the Member States, the Member State responsible for examining and deciding on an application shall be:

- the one whose territory constitutes the sole destination of the visit;
- if the visit includes more than one destination, the Member State whose territory constitutes the main destination of the visit in terms of the length or purpose of stay;
- if no main destination can be determined, the Member State whose external border the applicant intends to cross in order to enter the Schengen territory.

During the examination procedure, particular consideration must be given to assessing the authenticity and reliability of the travel and other documents submitted and whether the applicant presents a risk of illegal immigration or a risk to the security of the Member States. In justified cases consulates may call the applicant for an interview and request additional documents. Each applicant shall submit a completed and signed application form, as set out in Annex I.

Multiple-entry visas: the Regulation allows for the issuing of multiple-entry visas that are valid for six months to five years. There are two main conditions:

- the applicant proves the need or justifies the intention to travel frequently and/or regularly, in particular due to his occupational or family status, such as business persons, civil servants engaged in regular official contacts with Member States and EU institutions, representatives of civil society organizations travelling for the purpose of educational training, seminars and conferences, family members of citizens of the Union, family members of third-country nationals legally residing in Member States and seafarers;
- the applicant proves his integrity and reliability, with, in particular, the lawful use of previous uniform visas or visas with limited territorial validity, his financial situation in the country of origin and his genuine intention to leave the Schengen territory before the expiry of the visa.

Airport transit visas: the Regulation sets out a series of measures concerning airport transit visas. It stipulates that nationals of the third countries listed in Annex IV shall be required to hold an airport transit visa when passing through the international transit areas of airports situated on the territory of the Member States. However, it states that in urgent cases of mass influx of illegal immigrants, individual Member States may require nationals of third countries other than those referred to the common list to hold an airport transit visa when passing through the international transit areas of airports situated on their territory. Member States shall notify the Commission of such decisions before their entry into force and of withdrawals of such an airport transit visa requirement. The Regulation also sets out certain categories of persons which shall be exempt from the requirement to hold an airport transit visa (e.g. citizens from Canada and the United States).

Elements of biometric identification: the Regulation provides that at the time of submission of the first application, the applicant shall be required to appear in person. At that time, the following biometric identifiers of the applicant shall be collected:

- a photograph, scanned or taken at the time of application, and
- his 10 fingerprints taken flat and collected digitally.

Where fingerprints collected from the applicant as part of an earlier application were entered in the VIS for the first time less than 59 months before the date of the new application, they shall be copied to the subsequent application. Children under the age of 12 shall be exempt from the requirement to give fingerprints.

Cooperation, information and evaluation: further provisions concern:

- cooperation between Member States in countries where not all Member States have a consular representation, **Common Application Centres**;
- the **use of external service providers** and cooperation with commercial intermediaries for the lodging of applications (such as private administrative agencies, transport companies or travel agencies);
- general information notably the setting up of an **Internet site** dealing with Schengen visas to improve the visibility and a uniform image of the common visa policy;
- information as regards the cost of issuing visas;
- visas issued to seafarers in transit at the external border;
- specific procedures and conditions facilitate the application for and issuing of visas to members of the Olympic family for the duration of the Olympic and Paralympic Games organised by a Member State;
- the collection of statistical data;
- evaluations to be carried out by the European Commission (the first one two years after all provisions are applicable).

Territorial provisions: in accordance with the Protocols annexed to the Treaty on European Union and specific decisions adopted later on the Schengen acquis to certain third countries, the Code shall apply to Iceland and Norway as well as Switzerland and Liechtenstein, as they are associated with the implementation and development of the Schengen acquis. On the other hand, Denmark, Ireland and the United Kingdom shall not be taking part in the adoption of this Regulation and shall not be bound by it or subject to its application. Denmark shall decide within a period of six months after the date of adoption of this Regulation whether it will implement it in its national law.

ENTRY INTO FORCE: 05/10/2009. It shall apply from 05/04/2010. Certain provisions on the committee procedure and on notification will apply from 05/10/2009. As far as the Schengen Consultation Network

(Technical Specifications) is concerned, the repeal of Council Regulation (EC) No 789/2001 shall apply from the date referred to in Article 46 of the VIS Regulation. Lastly, certain provisions on the refusal of a visa, annulment and revocation and visas applied for at the external border shall apply from 05/04/2011.