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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code)

{SWD(2018) 77 final} - {SWD(2018) 78 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Visa Code is a core element of the common visa policy: it establishes harmonised procedures and conditions for processing visa applications and issuing visas. It entered into force on 5 April 2010, with the overarching objectives of facilitating legitimate travel and tackling irregular immigration, enhancing transparency and legal certainty, strengthening procedural guarantees and reinforcing equal treatment of visa applicants.

The Visa Code required the Commission to submit to the European Parliament and the Council an evaluation of its implementation two years after all the provisions of the Regulation had become applicable. It presented its evaluation in a report[1] and accompanying staff working document[2] on 1 April 2014. On the basis of this evaluation, on the same date the Commission adopted a proposal[3] for a recast of the Visa Code with the aim of enhancing travel to the EU through visa policy facilitations (thereby to contributing to tourism, trade, growth and employment in the EU) and to harmonising implementation of the common rules. However, due to divergences in the positions of the European Parliament and the Council, negotiations have not progressed. Meanwhile, greater security and migratory challenges have made it clear that the approach followed in 2014 no longer matches reality. These factors prompted the Commission to announce the withdrawal of its recast proposal in the Commission Work programme for 2018[4]. The formal withdrawal will take place in April 2018.

While migration- and security-related objectives have become increasingly important, one should not lose sight of the fact that the vast majority of visa applicants pose no security and/or migratory risk to the EU and are bringing significant benefits to the EU. Therefore, this proposal focuses on streamlining and improving operational aspects of the visa procedure and takes account of the results of negotiations on the Visa Code recast proposal. New elements have been added which were advanced in the Commission's September 2017 Communication on the *Delivery of the European Agenda on Migration*[5] and in its consultations, such as the need for sufficient financial resources to support Member States' visa processing, clear rules on the issuing of multiple entry visas with a long period of validity and the leverage role that visa policy can exert in the EU's readmission policy.

The Commission's proposal for the reform of the Visa Information System legal framework (to be presented in spring 2018) will further enhance the security and efficiency of the visa procedure, in particular by taking account of technological developments and harnessing them to the benefit of Member States' authorities and *bona fide* applicants, closing information gaps in some areas, enhancing checks on persons and speeding up the quality and outcome of the procedure.

• Consistency with existing policy provisions in the policy area

The common visa policy is a set of harmonised rules governing:

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1 Report from the Commission to the European Parliament and the Council : A smarter visa policy for economic growth. COM(2014)165 final.

2 Evaluation of the implementation of Regulation (EC) No 810/2009 of the European Parliament and Council establishing a Community Code on Visas (Visa Code). SWD (2014)101 final.

3 COM(2014) 164 final.

4 COM(2017) 650 final, 24.10.2017, Annex IV.

5 COM(2017)558 final.

– the common "visa lists" of countries whose nationals require a visa to travel to the EU and those that are exempt from that requirement[6];

– the Visa Code establishing the procedures and conditions for issuing short-stay visas;

– the uniform format for the visa sticker[7]; and

– the VIS[8], in which all visa applications and Member States' decisions are recorded, including applicants' personal data, photographs and fingerprints.

While adding new elements, the proposed amendments, will not fundamentally alter the Visa Code, which therefore remains faithful to the existing principles for the processing of visa applications.

• **Consistency with other Union policies**

While maintaining security at the external borders and ensuring the smooth functioning of the Schengen area, the proposed amendments facilitate travel for legitimate travellers and simplify the legal framework in the interest of Member States, e.g. by allowing more flexible rules on consular cooperation. The common visa policy should continue to contribute to growth but should also be coherent with other EU policies on external relations, trade, education, culture and tourism.

However, the changed migration situation and increased security threat in recent years have shifted the political debate on the Schengen area, in general, and visa policy, in particular, towards a reassessment of the balance between migration and security concerns, economic considerations and general external relations. Since the 2014 evaluation was published, the Visa Code objectives of preventing irregular migration and security risks have taken on greater significance. The changed political context has meant that visa policy came into focus as a tool for achieving progress in relations with third countries, as experience with visa liberalisation had already shown.

There have thus been calls for the EU to use visa policy more effectively in the EU's cooperation with third countries, specifically in the field of migration management. The European Council of June 2017 called for 'reassessing visa policy towards third countries, as needed'. This would allow achieving real progress in return and readmission policy while taking account of the Union's overall relations with the third countries concerned. As the Visa Code was not designed for use as leverage towards individual third countries, but rather as a means of standardising visa issuing procedures and conditions, it is not entirely suited to the new political context. The Commission recognised this changed reality in its *Communication on the Delivery of the European Agenda on Migration of September 2017*, in which it stated that 'some visa-issuing rules (for instance those related to visas with long validity and visa fees) should be reviewed to ensure that they can play a part in our readmission policy.' Detailed options as regards legislative implementation are examined in the attached impact assessment.[9]

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6 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, OJ L 81, 21.3.2001, p. 1.

7 Council Regulation (EC) No 1683/95 laying down a uniform format for visas, OJ L 164, 14.7.1995, p. 1.

8 Regulation (EC) No 767/2008 of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation), OJ L 218, 13.8.2008, p. 60.

9 SWD(2018) 77; executive summary: SWD(2018) 78.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis for this proposal is Article 77(2)(a) of the Treaty of the Functioning of the European Union (TFEU). The proposal amends Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)[10] which was based on the equivalent provisions of the Treaty establishing the European Community, i.e. Article 62(2)(a) and (b)(ii).

• Subsidiarity (for non-exclusive competence)

Article 77(2)(a) TFEU empowers the Union to develop measures concerning 'the common policy on visas and other short stay residence permits.'

The current proposal is within the limits set by this provision. The objective is further to develop and improve the rules of the Visa Code concerning the conditions and procedures for issuing visas for intended stays in the territory of Member States not exceeding 90 days in any 180-days period. This cannot be sufficiently achieved by the Member States acting alone, because only the Union can amend an existing Union Act (the Visa Code).

• Proportionality

Article 5(4) of the Treaty on the European Union (TEU) provides that the content and form of Union action must not exceed what is necessary to achieve the objectives of the Treaties. The form chosen for this action must enable the proposal to achieve its objective and be implemented as effectively as possible.

The Visa Code was established in 2009 by means of a Regulation in order to ensure that it would be applied in the same way in all Member States that apply the Schengen *acquis*. The proposed initiative constitutes an amendment to a Regulation and must therefore also take the form of a Regulation.

As to the content, this initiative covers improvements of the existing Regulation based on the basis of the policy objectives addressed in the 2014 recast proposal. The proportionality of the three new aspects that have been added is evaluated in the attached impact assessment[11]; in summary:

– the proposed increase of the visa fee is proportionate as it corresponds to what would have been the increase since 2006 (when the current level was set) based on the general EU-wide inflation rate;

– the proposed standard EU-level multiple entry visa 'cascade' is proportionate, because it largely corresponds to current practice in a number of Member States and can be adapted to local circumstances in a more favourable or more restrictive manner; and

– the proposed measures to improve cooperation on the readmission of irregular migrants are proportionate, as implementation of the general mechanism is to be adapted in a targeted, flexible and gradual approach. These do not affect the

[10] Regulation (EC) No 810/2009 of the European Parliament and Council establishing a Community Code on Visas (Visa Code), OJ L 243, 15.9.2009, p. 1.

[11] Points 7.1, 7.2 and 7.3.

possibility for the applicant to be granted a visa, as such, but cover certain facilitations in the procedure for issuing the visa or the level of the visa fee.

- **Choice of the instrument**

This proposal recasts Regulation No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code). Therefore only a Regulation can be chosen as a legal instrument.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

The consultation of interested parties is covered in the impact assessment[12] accompanying this proposal.

- **Impact assessment**

This proposal is supported by an impact assessment focusing on the three main problem areas addressed. Other elements linked either to the facilitation of visa procedures or to clarification and streamlining of existing provisions, have been carried over from the 2014 recast proposal.[13] Most of them concern rather procedural matters which do not leave much room for considering different policy options and have therefore not been examined in detail in the impact assessment.

Based on available data and the results of a stakeholder and an open public consultation, the impacts of the following policy options were assessed:

Problem area 1: Insufficient financial resources to support visa processing

– option 1A: status quo – unchanged common visa fee at EUR 60;

– option 1B: national visa fees based on administrative costs;

– option 1C: increase of common visa fee, with various sub-options: EUR 80, EUR 100, EUR 120 or a combination of EUR 80 for visas up to six months and EUR 120 for multiple entry visas of one to five years.

The preferred option is a moderate increase of the common visa fee to EUR 80. This is not the most effective option, as higher fee increases would obviously generate more financial resources. However, it will lead to a sound increase of revenues for Member States (+26%) and therefore support the integrity of visa processing and the security of the Schengen area. At the same time a moderate increase (EUR 20) will not be a deterrent for the overwhelming majority of visa applicants, for whom it will not be a decisive factor compared with the price of airline tickets to Europe and other costs involved in travel. Negative impact on travel behaviour and thus the EU tourism and travel industry will be minimal. In international comparison the fee will remain relatively low and therefore competitive.

Problem area 2: Repeated visa procedures for regular travellers

– option 2A: status quo – Member States determine their approach to issuing multiple entry visas with long validity;

– option 2B: recommended best practice;

[12] SWD (2018) 77.

[13] SWD (2014) 67 and SWD 68.

– option 2C: common multiple entry visa cascades with various sub-options (general multiple entry visa cascade, general and country multiple entry visas cascades, country multiple entry visas cascades);

– option 2D: standard multiple entry visas with two- or five-year validity.

The preferred option is a 'one-size-fits-all' multiple entry visas cascade at EU level and the possibility of adapting the cascade to specific countries. Though not the most effective option (compared with options that would prescribe long-validity multiple entry visas as the standard visa to be issued), it will achieve to a great extent the objective of increasing the number of long-validity multiple entry visas issued. It further combines a minimum standard applicable to all third countries with the possibility of more favourable solutions for specific third countries, adapted to local circumstances and migratory risk. Due to a reduced number of visa procedures for frequent travellers, it will produce cost savings for Member States and applicants. At the same time it will enable spontaneous travel by multiple entry visa holders and thus support the competitiveness of the EU tourism industry.

Problem area 3: Insufficient levels of return of irregular migrants to some countries of origin

– option 3A: status quo – Council 'toolbox approach' (mechanism coordinated by Council to apply measures related to the visa procedure to third countries not cooperating on readmission, within the limits of the existing legal framework);

– option 3B: positive incentives in visa policy;

– option 3C: negative incentives in visa policy with various sub-options (maximum approach aiming at all passports from the start or targeted approach in two phases: diplomatic and service passports, then ordinary passports).

The preferred option is targeted negative incentives. Negative measures in the visa area are likely to be most effective in bringing change in third country governments towards cooperation with Member States on the readmission of irregular migrants, although they might need to be combined with measures in other policy areas, to be fully successful. At the same time, the flexible approach first targeting the government officials of the country concerned or the general population is the most appropriate and proportionate approach and will entail the least negative consequences for travelling, economic sectors and the EU's standing and reputation.

In the proposal the targeted approach is maintained but rather than fixing the two-phase approach in the legal act, the text allows flexibility with regard to application of the measures in practice.

- **Fundamental rights**

The proposed amendments respect the fundamental rights set out in the Charter of Fundamental rights of the European Union.

4. BUDGETARY IMPLICATIONS

The proposed amendment has no implications for the EU budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

As there have been no substantive changes to the Visa Code since the 2004 evaluation was published, its findings remain generally valid today. See also Annex 4 to the attached impact assessment.

The proposed amendments concern the Visa Code the implementation of which is also evaluated through the Schengen evaluation mechanism in accordance with Council Regulation (EU) No 1053/2013[14], without prejudice to the Commission's role as guardian of the Treaties (Article 17(1) TEU).

- **Consequences of the various protocols annexed to the Treaties and of the association agreements concluded with third countries**

Regulation (EC) No 810/2009 of the European Parliament and of the Council[15] establishes the procedures and conditions for issuing visas for intended stays on the territory of Member States not exceeding 90 days in any 180 days period.

Because the legal basis for this proposal is to be found in Title V of Part Three of the TFEU, the system of 'variable geometry', as provided for in the protocols on the position of the Denmark, Ireland and the United Kingdom and the Schengen protocol, applies. The proposal builds on the Schengen *acquis*. The consequences for the various protocols and Schengen association agreements therefore have to be considered with regard to Denmark, Ireland and the United Kingdom, Iceland and Norway; and Switzerland and Liechtenstein. Likewise, the consequences for the various Acts of Accessions must be considered. The detailed situation of each of the States concerned is set out in recitals 18-26 of this proposal.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 – Subject matter and scope

– Paragraph (1) horizontal change: throughout the text the reference to "transit" as a travel purpose has been deleted because the artificial distinction between transit and stay (transit implies a stay) is abandoned (and the specific transit visa was abolished in the Visa Code, adopted in 2009).

Article 2 – Definitions

– Paragraph 2, point (a): see explanation under Article 1(1).

– Paragraph 7: a reference to appropriate legal basis (Decision No 1105/2011) is added.

– Paragraph 11 is deleted because is superfluous as the notion "commercial intermediary" is described in Article 45.

– Paragraph 12: a definition of 'seafarer' is added to ensure that all staff working on ships benefit from the various procedural facilitations.

[14] Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of the Schengen acquis, OJ L 295, 6.11.2013, p. 27.

[15] Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visa (OJ L 243, 15.9.2009, p. 1).

Article 3 – Third country nationals required to hold an airport transit visa

– Paragraph 5 (b) and (c): addition of a reference to the Caribbean parts of the Kingdom of the Netherlands.

Article 4 – Authorities competent for taking part in the procedures relating to applications

– Paragraph 2: addition of a reference to the new Article 36a which allows for the issuing of visas at external borders under a specific scheme.

Article 5 – Member State competent for examining and deciding on an application

– Paragraph 1 (b) is amended to maintain only one objective criterion, i.e. length of stay, for determining the Member State competent for examining an application when the envisaged trip covers more than one destination. The aim is to enhance clarity for visa applicants and avoid disagreement among Member States about competence.

– In adition, competence is clarified for cases where a person has to make several unconnected trips to different Member States within a short period where applying for a visa for each trip would not only be impossible because of time constraints but also be an excessive burden.

Article 8 – Representation arrangements

– Current paragraph 2 is deleted to ensure that the representing Member State is fully responsible for the processing of visa applications on behalf of the represented Member State, which will streamline the processing of visa applications under representation and is in line with the principle of mutual trust on which the Schengen acquis is based.

– Paragraph 3 governs the collection and transmission of files and data among Member States in situations where a Member State represents another solely for the collection of applications and biometric identifiers.

– Paragraph 4 is amended to take account of the deletion of the possibility of a represented Member State to require being involved in cases handled under representation.

– Paragraph 7 sets a minimum deadline by which the represented Member States must notify the Commission of the conclusion or termination of representation arrangements.

– Paragraph 8 provides that the representing Member States shall at the same time notify to other Member States and the EU Delegation in the jurisdiction concerned the conclusion or termination of representation arrangements.

– Paragraph 10 is added to prevent prolonged interruption of operations and the manual issuing of visa stickers.

Article 9 – Practical modalities for lodging an application

– Paragraph 1 extends to six months the maximum deadline for lodging an application to allow travellers to plan ahead and avoid peak seasons; due to their specific working conditions, seafarers may lodge their application nine months before the

intended trip. Minimum deadline for lodging an application has been set to allow Member States time for proper assessment of applications and organisation of work.

– Paragraph 4 is amended to clarify the rules on who may lodge the application on behalf of the applicant and a reference is made to professional, cultural, sports or education association or institution as distinct from commercial intermediaries.

– Paragraph 5 has been moved from the previous Article 40(4) and amended to emphasise the basic principle that an applicant should only have to go to one location to lodge an application.

Article 10 - General rules for lodging an application

– Paragraph 1 has been replaced by a new text to take account of the abolition of the general principle of all applicants having to lodge the application in person each time they apply for a visa. This change is without prejudice to the obligations imposed on Member States by Directive 2004/38/EC, in particular its Article 5(2). Applicants are required to appear in person at the consulate or the external service provider for the collection of fingerprints to be stored in the VIS.

– Paragraph 2 is deleted as a consequence of the amendment of paragraph 1.

Article 11 – Application form

– Paragraph 1 is amended to add a reference to the possibility of filling in and signing the application form electronically.

– Paragraph 1a is added to emphasise that the content of the electronic application forms must correspond to the content of the uniform application form in Annex I and no additional entries may be added.

– Paragraph 3 has been simplified to ensure that the application form is always, as a minimum, available in the official language of the Member State, for which the visa is requested, and that of the host state.

– Paragraph 4 is deleted because of changes in paragraph 3.

Article 14 – Supporting documents

– Paragraph 4 is amended to clarify and further harmonise the content of the national forms for sponsorship and/or invitation.

– Paragraph 5 is replaced to match the enhance role to be played by local Schengen cooperation (Article 48(1)).

– Paragraph 5a has been added to take account of the provisions on implementing measures set out in Article 52(2).

Article 15 –Travel medical insurance

– In Paragraph 1 the reference to "two" entries has been deleted as a consequence of the deletion of the same reference in Article 24(1).

– Paragraph 2 has been amended to clarify that applicants applying for a multiple entry visa have to provide proof of travel medical insurance only for the first intended visit.

Article 16 – Visa fee

- Paragraph 1: the visa fee is increased from EUR 60 to EUR 80 to ensure better coverage of Member States' costs; this will increase of Member States' resources (+26%), while not representing a deterrent for the overwhelming majority of visa applicants, compared with the travel and other costs involved. A mechanism is introduced to assess the need to revise the fee every two years taking into account criteria such as the EU inflation rate, is introduced. This allows for regular monitoring and a review of the fee where appropriate. *Inter alia* the proposed increase of the fee will allow Member State to maintain adequate levels of consular staff to process visa applications within the timeframe set in Article 23.
- Paragraph 2: the visa fee for minors (6-12 years of age) will be increased by EUR 5 to EUR 40.
- Paragraph 3 is deleted because the reference to "administrative costs" is artificial given that research has shown that the precise administrative costs cannot be calculated. The imprecise reference to regular revisions is replaced by a clearer revision mechanism in paragraph 8a.
- Paragraph 4(c): the text is amended to ensure that researchers participating in seminars/conferences are also covered by the visa fee waiver and a reference to the correct legal basis is added.
- Paragraph 5 is deleted as general optional visa fee waivers are mostly decided upon at central level and therefore local harmonisation is not possible.
- New Paragraph 8a establishes a mechanism for revision at regular (two-year) intervals and refers to the criteria on which to base such revision.

Article 17 – Service fee

- In paragraph 1, the reference to an ‘additional’ service fee has been deleted as it is misleading.
- Paragraph 3 is deleted as experience has shown that such local harmonisation of service fees set in general contracts established at central level is not feasible.
- A new paragraph 4a is added to allowing external service providers to charge a higher service fee when operating in third countries whose nationals are under visa requirement and where no Member State is present to collect visa applications. A higher service fee will cover the transfer of application files and return of travel document to/from the case-handling consulate located in another country.
- Paragraph 5 is deleted as Member States should not be obliged to maintain the possibility of direct access for lodging applications at the consulate in places where an external service provider has been mandated to collect visa applications. This does not prevent them from offering the possibility of direct access.

Article 21 - Verification of entry conditions and risk assessment

- Paragraph 3 (e) is amended as a consequence of the amendment of Article 15(2).
- Paragraph 4 is amended to clarify the distinction between earlier stays under short stay visas and other types of visas or residence permits.

– Paragraph 8 is amended to allow Member States to use modern means of communication to interview applicants, rather than requiring them to come to the consulate in person.

Article 22 – Prior consultation

– Paragraph 2 is amended to require Member States to reply to consultation requests as soon as possible and at the latest within seven calendar days.

– Paragraph 3 requires Member States to notify requests for prior consultation at the latest 15 calendar days before the introduction of the measure so that applicants can be informed in good time and other Member States can prepare at technical level.

– Paragraph 5 is deleted because it has become obsolete.

Article 23 – Decision on the application

– Paragraph 1 provides that the general decision making time should be maximum 10 days. The average decision making time is 5 days according to information recorded in the Visa Information System. Short decision making times are used by some Member States as a deliberate means of attracting travellers and excessive discrepancies between processing times lead to 'visa shopping'. The proposed increased visa fee will allow Member States to maintain or increase numbers of decision-making staff in consulates to ensure that decisions are taken on applications within the maximum deadline.

– Paragraph 2 is amended to allow for extending the maximum period for deciding on applications to 45 days and the last sentence is deleted as a consequence of the abolition of the provision whereby a represented Member State can require to be consulted on cases handled in representation (Article 8(4)).

– Paragraph 3 is deleted because a period of 60 calendar days to examine an application for a short-stay visa is excessive.

– A new point ba) is added in paragraph 4 to add a reference to airport transit visas which is missing in the current Visa Code.

– Point (d) in paragraph 4 is deleted as a consequence of the abolition of the provision allowing a represented Member State to be consulted; this abolishes the requirement that certain cases be transmitted for handling by the represented Member State rather than the representing Member State.

Article 24 – Issuing of a uniform visa

– In the first sentence of the second subparagraph of paragraph 1, the reference to 'two-entry' visas is deleted as it is superfluous – it is covered by the word 'multiple' and could limit the issuing of multiple entry visas.

– The third subparagraph is deleted as a consequence of the deletion of the reference to "transit" in Article 1(1).

– The formulation of the fourth subparagraph of paragraph 1, is clarified by removing the reference to 'additional' as it lead to misunderstandings as regards the calculation of the validity of the travel medical insurance.

– A reformulated paragraph 2 establishes general rules for a gradual issuing of multiple entry visas with a long validity, i.e. a "cascade". Such harmonised rules will prevent "visa shopping" and fraudulent behaviour where applicants seek to conceal the true Member State of destination in order to apply at the consulate perceived as granting visas with the longest validity.

– A new paragraph 2a is added to allow for divergence from paragraph 2 where there is reasonable doubt as to whether the applicant will be able to fulfil the entry conditions throughout the period of validity of the visa

– A new paragraph 2b is added to allow for local adaptation of the 'cascade' to take account of local circumstances and migratory and security risks.

– A new paragraph 2c is added to cover other cases of visa applicants eligible for being granted an multiple entry visa with a long validity.

– A new paragraph 2d refers to the procedures for adopting such local 'cascades'. Reference is made to the need to take account, in the assessment of the local adaptation, of migratory and security risk and the third country's cooperation on the readmission of irregular migrants.

Article 25a – Cooperation on readmission

– Paragraph 1: the general provisions on the limited number of supporting documents, the visa fee as established in Article 16(1), fee waiver for holders of diplomatic passports, 10-day processing time and the issuing of multiple entry visas will not apply to nationals of third countries not cooperating on readmission on the basis of objective and relevant criteria. The precise implementation of restrictive measures will be set out in the implementing act, referred to in paragraph 5.

– Paragraph 2: the Commission is regularly to assess third countries' cooperation on readmission, taking account of a number of indicators.

– Paragraph 3: Member States may notify substantial and persistent practical readmission problems with a given third country on the basis of the same indicators as set out in paragraph 2.

– Paragraph 4: the Commission is to assess Member States' notifications within one month.

– Paragraph 5: on the basis of its analysis of Member States' notifications, where it considers that action is needed, the Commission is to adopt an implementing act temporarily suspending/applying the relevant provisions (cf. paragraph 1) to all nationals or categories of nationals of the third country in question.

– Paragraph 6: the Commission is continuously to assess the third country's effective cooperation on readmission in order to adapt or repeal the application of restrictive measures.

– Paragraph 7: at the latest six months after the entry into force of the implementing act, the Commission is to report to European Parliament and the Council on progress on cooperation on readmission.

Article 27 – Filling in of the visa sticker

– Paragraph 1 is replaced and deletes Annex VII on the filling in of the visa sticker and empowers the Commission to adopt the details for filling in the visa sticker by an implementing act.

– Paragraph 2 is amended to strengthen the provisions on the national comments on the visa sticker.

– Paragraph 4 is amended to ensure that only single entry visas are issued manually.

Article 29 – Affixing a visa sticker

– Paragraph 1 is amended to take account of the deletion of Annex VIII.

– Paragraph 1a is inserted to empower the Commission to adopt the operational instructions on how to affix the visa sticker by an implementing act.

Article 31 – Informing central authorities of other Member States

– Paragraph 2 is amended to ensure timely information of other Member States, in line with changes made in Article 22 (prior consultation).

Article 32 – Refusal of a visa

– A new point iia is added in paragraph 1, point 1(a), to remedy an earlier omission related to airport transit.

– Paragraph 3 is replaced to refer to the need for Member States to provide detailed information on appeal procedures and for such procedures to guarantee an effective judicial appeal (cf. ECJ ruling Case C- 403/16).

– Paragraph 4 is deleted as a consequence of deleting of the provision requiring that certain cases be transmitted for handling by the represented Member State rather than the representing Member State.

Article 36 – Visas issued to seafarers in transit at the external borders

– Paragraph 2 is deleted.

– Paragraph 3 is inserted to empower the Commission to adopt the operational instructions for issuing visas to seafarers at the borders.

Article 36a – Visas applied for at the external border under a specific scheme

– In order to promote short term tourism (max. seven days), a new provision derogating from the general rules on the issuing of visas at the external border has been introduced. Member States will be allowed to issue visas at the external border under specific schemes subject to strict criteria and upon notification and publication of the organisational modalities of the scheme. Detailed provisions establish safeguards to minimise the irregular migration and security risks, particularly by limiting the duration of such schemes to four months and restricting their scope to nationals of the country adjacent to the land border crossing point or are nationals of a country having direct ferry connection to the sea border crossing point. Specially trained staff must carry out a full examination of compliance with all entry conditions must be carried out in appropriate structures. The visa eventually issued shall be valid for the issuing Member State only for one entry and a stay of no more

than seven days. The schemes can apply only to nationals of third countries having concluded a readmission agreement and for which the mechanism referred to in Article 25a has not been triggered.

Article 37 – Organisation of visa sections

– Paragraph 3 is amended to allow for electronic filing and to reduce the minimum period of archiving.

Article 38 – Resources for examining applications and monitoring of consulates

– A new paragraph 1a is added to ensure that the integrity of the visa-handling procedure is enforced and monitored appropriately.

Article 40 – Consular organisation and cooperation

– More flexible rules have been added that allow Member States to optimise their use of resources, increase consular coverage and develop cooperation.

– In paragraph 1, the second sentence has become obsolete, as the lodging of applications at consulates is no longer the basic principle, and it is therefore deleted.

– Point (b) of paragraph 2 is reworded as a consequence of the deletion of the old Article 41 and of the abolition of recourse to outsourcing as a 'last resort'.

Article 41 Cooperation between Member States

– This Article has been deleted because the options set out have proven not to be feasible. The revised Article 40 allows the Member States to develop cooperation in a more flexible manner.

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Article 43 – Cooperation with external service providers

– Paragraph 3 is deleted because Member States generally draw up global contracts with external service providers at central level.

– A reference to the mandatory information to be given to applicants is added in in point (a) in paragraph 6.

– Point (e) of paragraph 6 is amended as a consequence of the amendment of Articles 10 and 40.

– Paragraph 7 is amended to extend the range of entities that can participate in calls for tenders.

– Paragraph 9 is amended to take account of new legislation on data protection and to ensure that external service providers' respect of data protection rules is monitored by Member States' data protection supervisory authorities.

– Paragraph 11 is amended to emphasise that Member States must verify that external service providers provide applicants with all the information required under Article 47(1) and to reinforce the obligation of the Member States to monitor external service providers.

– A new paragraph 11a is added to require that Member States report annually to the Commission on their cooperation with and monitoring of external service providers.

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Article 44 – Encryption and secure transfer of data

– Paragraphs 1, 2 and 3 are amended to take account of the removal from Article 8 of references to the involvement of the represented Member State.

Article 45 - Member States' cooperation with commercial intermediaries

– Paragraph 1 is amended as a consequence of the deletion of the old Article 2(11), i.e. the definition of commercial intermediary.

– Paragraph 3 is amended because it duplicates the general rule set out in Article 21(3)(e) on the verification of applicants' possession of adequate travel medical insurance.

Article 47

– Paragraph 1, point (c) is amended to take account of the deletion of the old Article 41.

Article 48 – Local Schengen cooperation

– Paragraph 1 is reworded to clarify the mandatory nature of local Schengen cooperation (LSC).

– Paragraph 1a, first sentence, and points (a) and (b) are amended to provide that within LSC, harmonised lists of supporting documents and local implementation of multiple entry visa 'cascades' are prepared.

– Paragraph 2 is deleted and the content inserted into paragraph 1a.

– Point (a) of paragraph 3 is amended to provide for the quarterly (rather than monthly) compilations of statistics on visas at local level.

– Point (b) of paragraph 3 is amended to emphasise which aspects should be discussed (and assessed) in the LSC.

– Paragraph 6a is amended to provide that on the basis of the annual reports drawn up in the various LSC contexts, the Commission draws up one annual report to be transmitted to the European Parliament and the Council.

– Article 50 is deleted as a consequence of the deletion of Annexes VII, VIII and IX. Amendment of the remaining Annexes will amended following a full legislative procedure.

Articles 50a and 50b Exercise of delegation and urgency procedure

– These Articles are added to take account of the provisions of Article 290 of TFEU.

*Article 51 – Instructions on the practical application of the Visa Cod*e

– The Article is amended to take account of the provisions set out in Article 52(2).

Article 52 – Committee procedure

– This Article is replaced to take account of the provisions governing the exercise of the Commission's implementing powers in accordance with Regulation (EU) No 182/2011.

Article 2 - Monitoring and evaluation

These are the standard provisions regarding monitoring and evaluation of legal instruments.

Article 3 - Entry into force

– Paragraphs 1, 2 and 4: these are the standard clauses on entry into force and direct applicability. The application of the Regulation is deferred for [six months] following entry into force.

Annexes

– Annex I (application form) is replaced to simplify and clarify content.

– Annex V (residence permits issued by certain third countries the holders of which are exempt from the airport transit visa requirement) is replaced by updated information.

– Annex VI (standard form for giving reasons for refusal, annulment or revocation of a visa) to allow for more detailed information on refusal grounds and procedures for appealing against negative decisions.

– Annexes VII, VIII and IX are deleted.

– Annex X (list of minimum requirements to be included in the legal instrument covering cooperation with external service providers) is replaced to add more details with regard to certain aspects to be covered in the legal instrument.

2018/0061 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(a) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[16],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The European Union's common short-stay visa policy has been an integral part to the establishment of an area without internal borders. Visa policy should remain an essential tool for facilitating tourism and business, while helping counter security risks and the risk of irregular migration to the Union.

(2) The Union should use its visa policy in its cooperation with third countries, and to ensure a better balance between migration and security concerns, economic considerations and general external relations.

(3) Regulation (EC) No 810/2009 of the European Parliament and of the Council[17] establishes the procedures and conditions for issuing visas for intended stays on the territory of Member States not exceeding 90 days in any 180-days period.

(4) The visa application procedure should be as easy as possible for applicants. It should be clear which Member State is competent for examining an application for a visa in particular where the intended visit covers several Member States. Where possible, Member States should allow for application forms to be completed and submitted electronically. Deadlines should be established for the various steps of the procedure in particular to allow travellers to plan ahead and avoid peak seasons in consulates.

(5) Member States should not be obliged to maintain the possibility of direct access for the lodging of applications at the consulate in places where an external service provider has been mandated to collect visa applications on its behalf, without

[16] OJ C , , p. .

[17] Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visa (OJ L 243, 15.9.2009, p. 1).

prejudice to the obligations imposed on Member States by Directive 2004/38/EC[18], in particular its Article 5(2).

(6) The visa fee should ensure that sufficient financial resources are available to cover the expenses of visa processing, including appropriate structures and sufficient staff to ensure the quality and integrity of the examination of visa applications. The amount of the visa fee should be revised on a two-yearly basis on the basis of objective criteria.

(7) To ensure that nationals of third countries subject to the visa requirement can lodge their visa application in their place of residence even if no Member State is present for the purpose of collecting applications, external service providers should be enabled to provide the necessary service for a fee exceeding the general maximum level.

(8) Representation arrangements should be streamlined and obstacles to the conclusion of such arrangements among Member States should be avoided. The representing Member State should be responsible for the entire processing of visa applications without the involvement of the represented Member State.

(9) In order to lessen the administrative burden on Member States' consulates and to facilitate smooth travel for frequent or regular travellers, multiple-entry visas with a long period of validity should be issued according to objectively determined common criteria and not be limited to specific travel purposes or categories of applicants.

(10) Given the differences in local circumstances notably with regard to migratory and security risks**,** as well as the relationships that the Union maintains with specific countries, Member States' diplomatic missions and consular posts in individual locations should assess the need to adapt the general provisions to allow for a more favourable or more restrictive application. More favourable approaches in issuing multiple-entry visas with a long period of validity should take into account, in particular, the existence of trade agreements covering the mobility of business persons, and the third country's cooperation on the readmission of irregular migrants.

(11) In case of lack of cooperation of certain third countries to readmit their nationals apprehended in an irregular situation and failure of those third countries to cooperate effectively in the return process, a restrictive and temporary application of certain provisions of Regulation (EC) No 810/2009 should on the basis of a transparent mechanism based on objective criteria, be applied to enhance a given third country's cooperation on readmission of irregular migrants.

(12) Applicants who have been refused a visa should have the right to appeal which should, at a certain stage of the proceedings, guarantee an effective judicial appeal. More detailed information on the refusal grounds and procedures for appeal of negative decisions should be provided in the notification of the refusal.

(13) The issuing of visas at the external border should remain exceptional. However, to promote short term tourism, Member States should be authorised to issue visas at the external border on the basis of temporary schemes, for which the organisational arrangements should be notified and published. Such schemes should be limited in scope and comply with the general rules for processing visa applications. The validity of the visa issued should be limited to the territory of the issuing Member State.

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[18] Council Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 229, 29.6.2004, p. 35.

(14) Local Schengen cooperation is crucial for the harmonised application of the common visa policy and for proper assessment of migratory and security risks. Cooperation and exchanges among Member States' diplomatic missions and consular posts in individual locations should be coordinated by Union Delegations. They should assess the operational application of specific provisions in the light of local circumstances and migratory risk.

(15) Member States should closely and regularly monitor the operations of external service providers to ensure compliance with the legal instrument governing the responsibilities entrusted with the external service provider. Member States should report to the Commission annually on the cooperation with and monitoring of external service providers. Member States should ensure that the entire procedure for the processing of visa applications and the cooperation with external service providers is monitored by expatriate staff.

(16) Flexible rules should be established to allow Member States to optimise the sharing of resources and to increase consular coverage. Cooperation among Member States (Schengen Visa Centres) could take any form suited to local circumstances in order to increase geographical consular coverage, reduce Member States' costs, increase the visibility of the Union and improve the service offered to visa applicants.

(17) Electronic visa application systems developed by Member States help to facilitate application procedures for applicants and consulates. A common solution allowing full digitisation should be developed, making full use of the recent legal and technological developments.

(18) In accordance with Articles 1 and 2 of the Protocol No 22 on the Position of Denmark annexed to the Treaty on European Union (TEU) and to the Treaty establishing the European Community on the Functioning of the European Union (TFEU) Denmark is not taking part in the adoption of this Regulation and is not bound by it, or subject to its application. Given that this Regulation builds upon the Schengen acquis under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

(19) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC[19]. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(20) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC[20]. Ireland is therefore not taking part in the adoption of the Regulation and is not bound by it or subject to its application.

(21) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded between the Council of the European Union and the Republic of Iceland and the

[19] Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* (OJ L 131, 1.6.2000, p. 43).

[20] Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen *acquis*[21] which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC.[22]

(22) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[23], which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC.[24]

(23) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol signed between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement concluded between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU[25] on the conclusion of that Protocol.

(24) As regards Cyprus, this Regulation constitutes an act building upon or otherwise related to the Schengen acquis, within the meaning of Article 3(12) of the 2003 Act of Accession.

(25) As regards Bulgaria and Romania, this Regulation constitutes an act building upon or otherwise related to the Schengen acquis within the meaning of Article 4(12) of the 2005 Act of Accession.

(26) As regards Croatia, this Regulation constitutes an act building upon, or otherwise related to, the Schengen acquis within the meaning of Article 4(2) of the 2011 Act of Accession.

(27) Regulation (EC) No 810/2009 should therefore be amended accordingly,

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21 OJ L 176, 10.7.1999, p. 36.

22 Council Decision of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis (OJ L 176, 10.7.1999, p. 31).

23 OJ L 53, 27.2.2008, p. 52.

24 Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 53, 27.2.2008, p. 1).

25 Council Decision of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 810/2009 is amended as follows:

(1) In Article 1, paragraph 1 is replaced by the following:

"1. This Regulation establishes the conditions and procedures for issuing visas for intended stays on the territory of the Member States not exceeding 90 days in any 180-days period.";

(2) Article 2 is amended as follows:

(a) in point 2, point (a) is replaced by the following:

"(a) an intended stay on the territory of the Member States of a duration of no more than 90 days in any 180 days period; or".;

(b) point 7 is replaced by the following:

"7. 'recognised travel document' means a travel document recognised by one or more Member States for the purpose of crossing the external borders and affixing a visa pursuant to Decision No 1105/2011 of the European Parliament and of the Council.[26]";

(c) point 11 is deleted;

(d) The following new point is added:

"12. 'seafarer' means any person who is employed, engaged or works in any capacity on board a seagoing ship or a ship navigating in international inland waters."

(3) in Article 3(5) points (b) and (c) are replaced by the following:

"(b) third-country nationals holding a valid residence permit issued by a Member State which does not take part in the adoption of this Regulation or by a Member State which does not yet apply the provisions of the Schengen acquis in full, or third-country nationals holding one of the valid residence permits listed in Annex V issued by Andorra, Canada, Japan, San Marino or the United States of America guaranteeing the holder's unconditional readmission, or holding a residence permit for the Caribbean parts of the Kingdom of the Netherlands (Aruba, Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba);

(c) third-country nationals holding a valid visa for a Member State which does not take part in the adoption of this Regulation, or for a Member State which does not yet apply the provisions of the Schengen acquis in full, or for a country party to the Agreement on the European Economic Area, or for Canada, Japan or the United States of America, or holders of a valid visa for the Caribbean parts of the Kingdom of the Netherlands (Aruba, Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba), when travelling to the issuing country or to any other third country, or when, having used the visa, returning from the issuing country;";

(4) in Article 4, paragraph 2 is replaced by the following:

[26] Decision No 1105/2011/EU of the European Parliament and of the Council of 25 October 2011 on the list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa and on setting up a mechanism for establishing this list. OJ L 287, 4.11.2011, p. 9.

"2. By way of derogation from paragraph 1, the authorities responsible for checks on persons may examine and decide on applications at the external borders of the Member States, in accordance with Articles 35, 36 and 36a.";

(5) in Article 5(1) point (b) is replaced by the following:

"(b) if the visit includes more than one destination, or if several separate visits are to be carried out within a period of two months, the Member State whose territory constitutes the main destination of the visit(s) in terms of the length of stay, counted in days; or";

(6) Article 8 is amended as follows:

(a) paragraph 2 is deleted;

(b) paragraphs 3 and 4 are replaced by the following:

"3. Where the representation is limited to the collection of applications, the collection and data, and their transmission to the represented Member State shall be carried out in compliance with the relevant data protection and security rules.

4. A bilateral arrangement shall be established between the representing Member State and the represented Member State. That arrangement :

(a) shall specify the duration of the representation, if only temporary, and the procedures for its termination;

(b) may, in particular when the represented Member State has a consulate in the third country concerned, provide for the provision of premises, staff and payments by the represented Member State.";

(c) paragraphs 7 and 8 are replaced by the following:

"7. The represented Member State shall notify the Commission of the representation arrangements or the termination of those arrangements at the latest one month before they enter into force or are terminated, except in cases of *force majeure*.

8. The consulate of the representing Member State shall, at the same time that the notification referred to in paragraph 7 takes place, inform both the consulates of other Member States and the Delegation of the European Union in the jurisdiction concerned about representation arrangements or the termination of such arrangements.";

(d) the following new paragraph is added:

"10. In cases of prolonged technical force majeure, a Member State shall seek temporary representation by another Member State in the given location for all or some categories of visa applicants.";

(7) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

"Applications may be lodged no more than six months, and for seafarers in the performance of their duties, no more than nine months before the start of the intended visit and, as a rule, no later than 15 calendar days before that start.";

(b) paragraph 4 is replaced by the following:

(c) "4. Without prejudice to Article 13, applications may be lodged:

(a) by the applicant;

(b) by an accredited commercial intermediary, as referred to in Article 45;

(c) by a professional, cultural, sports or educational association or institution on behalf its members.";

(d) the following new paragraph is added:

"5. An applicant shall not be required to appear in person at more than one location in order to lodge an application.";

(8) Article 10 is amended as follows:

(a) paragraph 1 is replaced by the following:

"Applicants shall appear in person when lodging an application for the collection of fingerprints, in accordance with Article 13 (2), (3) and (7)(b).";

(b) paragraph 2 is deleted;

(9) Article 11 is amended as follows:

(a) the first sentence of paragraph 1 is replaced by the following:

"1. Each applicant shall submit a manually or electronically completed and manually or electronically signed application form, as set out in Annex I.";

(b) The following new paragraph 1a is inserted:

"1a. The content of the electronic version of the application form, if applicable, shall be as set out in Annex I.";

(c) paragraph 3 is replaced by the following:

(d) "3. The form shall, as a minimum, be available in the following languages:

(a) the official language(s) of the Member State for which a visa is requested; and

(b) the official language(s) of the host country.

In addition to the language(s) referred to in point (a), the form may be made available in any other official language(s) of the institutions of the European Union;";

(e) paragraph 4 is deleted;

(10) Article 14 is amended as follows:

(a) paragraphs 4 and 5 are replaced by the following:

"4. Member States may require applicants to present a proof of sponsorship and private accommodation or both by completing a form drawn up by each Member State. That form shall indicate in particular:

(a) whether its purpose is proof of sponsorship or of private accommodation;

(b) whether the sponsor/inviting person is an individual, a company or an organisation;

(c) the identity and contact details of the sponsor/inviting person;

(d) the applicant(s);

(e) the address of the accommodation;

(f) the length and purpose of the stay;

(g) possible family ties with the sponsor/inviting person.

(h) the information required pursuant to Article 37(1) of Regulation (EC) No 767/2008.

In addition to the Member State's official language(s), the form shall be drawn up in at least one other official language of the institutions of the Union. A specimen of the form shall be sent to the Commission.

5. Member States' consulates shall within local Schengen cooperation, as referred to in Article 48, assess the implementation of the conditions laid down in paragraph 1, to take account of local circumstances, and of migratory and security risks.";

(b) The following new paragraph 5a is inserted:

"5a. Where necessary in order to take account of local circumstances as referred to in Article 48, the Commission shall by means of implementing acts adopt a harmonised list of supporting documents to be used in each jurisdiction. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 52(2).";

(11) Article 15 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Applicants for a uniform visa for one entry shall prove that they are in possession of adequate and valid travel medical insurance to cover any expenses that might arise in connection with repatriation for medical reasons, urgent medical attention and emergency hospital treatment or death, during their intended stay on the territory of the Member States.";

(b) in paragraph 2, the first subparagraph is replaced by the following:

"2. Applicants for a uniform visa for multiple entries shall prove that they are in possession of adequate and valid travel medical insurance covering the period of their first intended visit.";

(12) Article 16 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

"1. Applicants shall pay a visa fee of EUR 80.

2. Children from the age of six years and below the age of 12 years shall pay a visa fee of EUR 40.";

(b) The following new paragraph 2a is inserted:

"2a A visa fee of EUR 160 shall apply when the Commission so decides in accordance with Article 25a(5).";

(c) paragraph 3 is deleted.

(d) in paragraph 4, point (c) is replaced by the following:

"(c) researchers from third countries, as defined in Council Directive 2005/71/EC[27], travelling for the purpose of carrying out scientific research or participating in a scientific seminar or conference;";

[27] Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purpose of scientific research (OJ L 289, 3.11.2005, p. 15).

(e) in paragraph 5 the second subparagraph is deleted;

(f) the following new paragraph is inserted:

"8a. The Commission shall assess the need to revise the amount of the visa fees set out in Article 16(1), (2) and (2a) every two years, taking into account objective criteria, such as the general EU-wide inflation rate as published by Eurostat, and the weighted average of the salaries of Member States' civil servants and, where appropriate, amend the amount of the visa fees by means of delegated acts.";

(13) Article 17 is amended as follows:

(a) The first sentence of paragraph 1 is replaced by the following:

"A service fee may be charged by an external service provider referred to in Article 43.";

(b) paragraph 3 is deleted;

(c) the following new paragraph 4a is inserted:

"4a. By derogation from paragraph 4, the service fee shall not exceed the amount of the visa fee, in third countries whose nationals are subject to the visa requirement where no Member State has a consulate for the purpose of collecting visa applications." ;

(d) paragraph 5 is deleted;

(14) Article 21 is amended as follows:

(a) in paragraph 3, point (e) is replaced by the following :

"(e) that the applicant is in possession of adequate and valid travel medical insurance, where applicable, covering the period of the intended stay, or, if a uniform visa for multiple entry is applied for, the period of the first intended visit.";

(b) paragraph 4 is replaced by the following:

"4. The consulate shall, where applicable, verify the length of previous and intended stays in order to verify that the applicant has not exceeded the maximum duration of authorised stay in the territory of the Member States, irrespective of possible stays authorised under a national long-stay visa or a residence permit.";

(c) paragraph 8 is replaced by the following:

"8. During the examination of an application, consulates may in justified cases carry out an interview with the applicant and request additional documents.";

(15) Article 22 is amended as follows

(a) paragraphs 2 and 3 are replaced by the following:

"2. The central authorities consulted shall reply definitively as soon as possible but not later than seven calendar days after being consulted. The absence of a reply within this deadline shall mean that they have no grounds for objecting to the issuing of the visa.

3. Member States shall notify the Commission of the introduction or withdrawal of the requirement of prior consultation, as a rule, at the latest 15 calendar days before it becomes applicable. This information shall also be given under local Schengen cooperation in the jurisdiction concerned.";

(b) paragraph 5 is deleted;

(16) Article 23 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

"1. Applications shall be decided within 10 calendar days of the date of the lodging of an application which is admissible in accordance with Article 19.

That period may be extended up to a maximum of 45 calendar days in individual cases, notably when further scrutiny of the application is needed.";

(b) paragraph 3 is deleted;

(c) paragraph 4 is amended as follows:

– (i) the following new point ba) is inserted:

"(ba) issue an airport transit visa in accordance with Article 26; or";

– (ii) point (d) is deleted;

(17) Article 24 is amended as follows:

(a) paragraph 1 is amended as follows:

– (i) in the second subparagraph, the first sentence is replaced by the following:

"A visa may be issued for one or multiple entries."

– (ii) the third subparagraph is deleted;

– (iii) the fourth subparagraph is replaced by the following:

"Without prejudice to Article 12(a), the period of validity of a single entry visa shall include a 'period of grace' of 15 calendar days.";

(b) paragraph 2 is replaced by the following:

"2. Multiple-entry visas with a long validity shall be issued for the following validity periods, unless the validity of the visa would exceed that of the travel document:

(a) for a validity period of one year, provided that the applicant has obtained and lawfully used three visas within the previous two years;

(b) for a validity period of two years shall be issued, provided that the applicant has obtained and lawfully used a previous multiple-entry visa valid for one year;

(c) for a validity period of five years, provided that the applicant has obtained and lawfully used a previous multiple-entry visa valid for two years.";

(c) the following new paragraphs are inserted:

"2a. By way of derogation from paragraph 2, the validity period of the visa issued may be shortened in individual cases where there is reasonable doubt that the entry conditions will be met for the entire period.

2b. By way of derogation from paragraph 2, Member States' consulates shall within local Schengen cooperation as referred to in Article 48, assess whether the rules on the issuing of the multiple entry visas set out in paragraph 2 need to be adapted to take account of local circumstances, and of migratory and security risk, in view of the adoption of more favourable or more restrictive rules in accordance with paragraph 2d.

2c. Without prejudice to paragraph 2, a multiple entry visa valid for up to five years may be issued to applicants who prove the need or justify their intention to travel frequently and/or regularly provided that they prove their integrity and reliability, in particular the lawful use of previous visas, their economic situation in the country of origin and their genuine intention to leave the territory of the Member States before the expiry of the visa for which they have applied.

2d. Where necessary on the basis of the assessment referred to in paragraph 2b, the Commission shall by means of implementing acts adopt the rules regarding the condition for the issuing of multiple-entry visas laid down in paragraph 2 to be applied in each jurisdiction in order to take account of local circumstances, of the migratory and security risks and of the cooperation of the third country in question on readmission of irregular migrants in the light of the indicators set out in Article 25a(2), and of its overall relation with the Union. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 52(2).";

(18) the following new Article is inserted:

"Article 25a

Cooperation on readmission

1. Article 14 (6), Article 16(1) and (5), point (b), Article 23(1), and Article 24(2) shall not apply to applicants or categories of applicants, who are nationals of a third country that is considered not to be cooperating sufficiently with Member States on the readmission of irregular migrants, on the basis of relevant and objective data, in accordance with this Article. This Article is without prejudice to the powers conferred on the Commission by Article 24(2d).

2. The Commission shall regularly assess third countries' cooperation with regard to readmission, taking account, in particular, of the following indicators:

(a) the number of return decisions issued to persons illegally staying on the territory of the Member States from the third country in question;

(b) the number of actual returns of persons issued with return decisions as a percentage of the number of return decisions issued to citizens of the third country in question including, where appropriate, on the basis of Union or bilateral readmission agreements, the number of third country nationals who have transited through its territory;

(c) the number of readmission requests accepted by the third country as a percentage of the number of such applications submitted to it.

3. A Member State may also notify the Commission if it is confronted with substantial and persisting practical problems in the cooperation with a third country in the readmission of irregular migrants on the basis of the same indicators as those listed in paragraph 2.

4. The Commission shall examine any notification made pursuant to paragraph 3 within a period of one month.

5. Where, on the basis of the analysis referred to in paragraphs 2 and 4, the Commission decides that a country is not cooperating sufficiently, and that action is therefore needed, it may, taking also account of the Union's overall relations with the third country concerned, adopt an implementing act, in accordance with the examination procedure referred to in Article 52(2):

(a) temporarily suspending the application of either Article 14(6), Article 16(5) point (b), Article 23(1), or Article 24(2), or of some or all of those provisions, to all nationals on the third country concerned or to certain categories thereof, or

(b) applying the visa fee set out in Article 16(2a) to all nationals of the third country concerned or to certain categories thereof.

6. The Commission shall continuously assess on the basis of the indicators set out in paragraph 2 whether significant improvement in the given third country's cooperation on readmission of irregular migrants can be established and, taking also account of the Union's overall relations with the third country concerned, may decide to repeal or amend the implementing act referred to in paragraph 5.

7. At the latest six months after the entry into force of the implementing act referred to in paragraph 5, the Commission shall report to the European Parliament and to the Council on progress achieved in that third country's cooperation on readmission.";

(19) Article 27 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

"1. The Commission shall by means of implementing acts adopt the details for filling in the visa sticker. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 52(2).

2. Member States may add national entries in the 'comments' section of the visa sticker. These entries shall neither duplicate the mandatory entries established in accordance with the procedure referred to in paragraph 1 nor indicate a specific travel purpose.";

(b) paragraph 4 is replaced by the following:

"4. A visa sticker for a single entry visa may be filled in manually only in case of technical *force majeure*. No changes shall be made to a manually filled in visa sticker.";

(20) Article 29 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. The printed visa sticker shall be affixed to the travel document."

(b) The following new paragraph is inserted:

"1a. The Commission shall by means of implementing acts adopt the detailed arrangements for affixing the visa sticker. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 52(2).";

(21) Article 31 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. Member States shall notify the Commission of the introduction or withdrawal of the requirement for such information at the latest 15 calendar days before it becomes applicable. The information shall also be given under local Schengen cooperation in the jurisdiction concerned.";

(b) paragraph 4 is deleted;

(22) Article 32 is amended as follows:

(a) In paragraph 1(a) the following point (iia) is inserted:

"(iia) does not provide justification for the purpose and conditions of the intended airport transit;";

(b) paragraph 3 is replaced by the following:

"3. Applicants who have been refused a visa shall have the right to appeal which shall, at a certain stage of the proceedings, guarantee an effective judicial appeal. Appeals shall be instituted against the Member State that has taken the final decision on the application and in accordance with the national law of that Member State. Member States shall provide applicants with detailed information regarding the procedure to be followed in the event of an appeal, as specified in Annex VI.";

(c) paragraph 4 is deleted;

(23) Article 36 is amended as follows:

(a) paragraph 2 is deleted;

(b) the following new paragraph is inserted:

"2a. The Commission shall by means of implementing acts adopt operational instructions for issuing visas at the border to seafarers. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 52(2).";

(24) The following new Article is inserted:

"Article 36a

Visas applied for at the external border under a specific scheme

1. In order to promote short term tourism and subject to the conditions set out in this Article, a Member State may decide temporarily to allow the lodging of visa applications at specific land- or sea-border crossing points to persons fulfilling the entry conditions set out in Article 6 (1) of Regulation (EC) No 2016/399 of the European Parliament and of the Council.[28]

2. The duration of the scheme shall be limited to four months in any calendar year and the categories of beneficiary shall be clearly defined and exclude third-country nationals falling within the category of persons for whom prior consultation is required in accordance with Article 22 and persons not residing in the country adjacent to the land-border crossing point or in a country having direct ferry connections to the sea-border crossing point. Those schemes shall only apply to nationals of third countries with which readmission agreements have been concluded and for which the Commission has not taken a decision in accordance with Article 25a(5).

3. The Member State concerned shall establish appropriate structures and deploy specially trained staff for the processing of visa applications and the carrying out of all verifications and risk assessment, as set out in Article 21.

[28] Regulation (EU) No 2016/399 of the European Parliament and of the Council of 9 March 2016 establishing a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).

4. A visa issued pursuant to a specific scheme shall allow for only one entry, be valid only for the territory of the issuing Member State and shall authorise a stay of no more than seven calendar days. No 'period of grace' shall be included in the period of validity of the visa.

5. Where a visa is refused at the external border pursuant to a specific scheme, the Member State may not impose on the carrier concerned the obligations set out in Article 26 of the Convention Implementing the Schengen Agreement.

6. Member States shall notify the Commission of any schemes at the latest six months before the start of their implementation. The notification shall specify the categories of beneficiary, the geographical scope, the organisational arrangements for the scheme and the measures envisaged to ensure compliance with the conditions set out in this Article.

The Commission shall publish this notification in the *Official Journal of the European Union*.

7. Three months after the end of the scheme, the Member State concerned shall submit a detailed implementation report to the Commission. The report shall contain information on the number of visas applied for, issued and refused (including the citizenship of the persons concerned), the duration of stay and the departure rate (including the citizenship of persons not departing from the territory of the Member State at the expiry of the visa).";

(25) in Article 37, paragraph 3 is be replaced by the following:

"3. Member States' consulates shall keep archives of applications in paper or electronic format. Each individual file shall contain the relevant information allowing for a reconstruction, if need be, of the background for the decision taken on the application.

Individual application files shall be kept for a minimum of one year from the date of the decision on the application as referred to in Article 23(1) or, in the case of appeal, until the end of the appeal procedure.";

(26) in Article 38, the following new paragraph is inserted:

"1a. Member States shall ensure that the entire procedure, including the cooperation with external service providers, is monitored by expatriate staff to ensure the integrity of all stages of the procedure." ;

(27) Article 40 is replaced by the following:

"Article 40

Consular organisation and cooperation

1. Each Member State shall be responsible for organising the procedures relating to applications.

2. Member States shall:

(a) equip their consulates and authorities responsible for issuing visas at the borders with the requisite material for the collection of biometric identifiers, as well as the offices of their honorary consuls, where they make use of them, to collect biometric identifiers in accordance with Article 42;

(b) cooperate with one or more other Member States under representation arrangements or any other form of consular cooperation.

3. A Member State may also cooperate with an external service provider in accordance with Article 43.

4. Member States shall notify to the Commission their consular organisation and cooperation in each consular location.

5. In the event of termination of cooperation with other Member States, Member States shall assure the continuity of full service.";

(28) Article 41 is deleted;

(29) Article 43 is amended as follows:

(a) paragraph 3 is deleted;

(b) paragraph 6 is amended as follows:

– (i) point (a) is replaced by the following:

"(a) providing general information on visa requirements, in accordance with Article 47(1)(a) – (c), and application forms." ;

– (ii) point (e) is replaced by the following:

"(e) managing the appointments for the applicant, where applicable, at the consulate or at the external service provider.";

(c) paragraph 7 is replaced by the following:

"7. When selecting an external service provider, the Member State concerned shall assess the reliability and solvency of the organisation or company and ensure that there is no conflict of interests. The scrutiny shall include, as appropriate, the necessary licences, commercial registration, statutes and bank contracts.";

(d) paragraph 9 is replaced by the following:

"9. Member States shall be responsible for compliance with the rules on the protection of personal data and ensure that the external service provider is subject to the monitoring by the data protection supervisory authorities pursuant to Article 51(1) of Regulation (EU) 2016/679.";

(e) paragraph 11 is amended as follows:

– (i) "(a) the general information on the criteria, conditions and procedures for applying for a visa, as set out in Article 47(1)(a), (b) and (c), and the content of the application forms provided by the external service provider to applicants.";

– (ii) the second subparagraph is replaced by the following:

"To this end, the consulate(s) of the Member State(s) concerned shall, on a regular basis and as a minimum every six months, carry out spot checks on the premises of the external service provider. Member States may agree to share the burden of this regular monitoring.";

(f) The following new paragraph is inserted:

"11a. By 1st January each year, Member States shall report to the Commission on their cooperation with and monitoring (as referred to in Annex X, point C) of external service providers worldwide.";

(30) Article 44 is replaced by the following:

"Article 44

Encryption and secure transfer of data

1. In the case of cooperation among Member States and cooperation with an external service provider and recourse to honorary consuls, the Member State(s) concerned shall ensure that data are fully encrypted, whether transferred electronically or physically on an electronic storage medium.

2. In third countries that prohibit the encryption of data to be electronically transferred the Member State(s) concerned shall not allow data to be transferred electronically.

In such cases, the Member State(s) concerned shall ensure that the electronic data are transferred physically in fully encrypted form on an electronic storage medium by a consular officer of a Member State or, where such transfer would require disproportionate or unreasonable measures, in another safe and secure way, for example by using established operators experienced in transporting sensitive documents and data in the third country concerned.

3. In all cases the level of security for the transfer shall be adapted to the sensitive nature of the data.";

(31) Article 45 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Member States may accept the lodging of applications, but not the collection of biometric identifiers, by a private administrative agency, a transport company or a travel agency, such as a tour operator or a retailer (commercial intermediaries)."

(b) paragraph 3 is replaced by the following:

"3. Accredited commercial intermediaries shall be monitored regularly by spot checks involving face-to-face or telephone interviews with applicants, the verification of trips and accommodation, and wherever deemed necessary, the verification of the documents relating to group return.";

(32) in Article 47(1), point (c), is replaced by the following:

"(c) where the application may be submitted (competent consulate or external service provider);"

(33) Article 48 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Member States' consulates and the Union delegations shall cooperate within each jurisdiction to ensure a harmonised application of the common visa policy taking into account local circumstances.

To this end, in accordance with Article 5(3) of Council Decision 2010/427[29], the Commission shall issue instructions to Union delegations to carry out the relevant coordination tasks provided for in this Article.";

(b) the following new paragraph is inserted:

"1a. Member States and the Commission shall, in particular, cooperate in order to:

(a) prepare a harmonised list of supporting documents to be submitted by applicants, taking into account Article 14;

b) prepare a local implementation of Article 24(2) regarding the issuing of multiple entry visas;

(c) ensure a common translation of the application form, where relevant;

(d) establish the list of travel documents issued by the host country and update it regularly;

(e) draw up a common information sheet;

(f) monitor, where relevant, the implementation of the derogations set out in Article 25a(5) and (6).";

(c) paragraph 2 is deleted.

(d) paragraph 3 is replaced by the following:

(e) "3. Member States under local Schengen cooperation shall exchange the following information:

(a) quarterly statistics on uniform visas, visas with limited territorial validity, and airport transit visas applied for, issued, and refused;

(b) information with regard to the assessment of migratory and/or security risks, in particular on:

(i) the socioeconomic structure of the host country;

(ii) sources of information at local level, including social security, health insurance, fiscal registers and entry-exit registrations;

(iii) the use of false, counterfeit or forged documents;

(iv) irregular immigration routes;

(v) trends in fraudulent behaviour;

(vi) trends in refusals;

(c) information on cooperation with transport companies;

(d) information on insurance companies providing adequate travel medical insurance, including verification of the type of coverage and possible excess amount.";

(f) the following new paragraph is inserted:

"6a. An annual report shall be drawn up within each jurisdiction by 31 December each year. On the basis of these reports, the Commission shall draw up an annual report on the state of local Schengen cooperation to be submitted to the European Parliament and the Council.";

[29] Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service, OJ L 201, 3.8.2010, p. 30.

(34) Article 50 is deleted;

(35) The following new Articles are inserted:

"Article 50a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. Powers to adopt delegated acts referred to in Article 16(8a) shall be conferred on the Commission for an indeterminate period of time.

3. The delegation of power referred to in Article 16(8a) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated act already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 16(8a), shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 50b

Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 50a(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or the Council.";

(36) Articles 51 and 52 are replaced by the following:

"Article 51

Instructions on the practical application of this Regulation

The Commission shall by means of implementing acts adopt the operational instructions on the practical application of the provisions of this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 52(2).

Article 52

Committee procedure

1. The Commission shall be assisted by a committee (the 'Visa Committee'). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.";

(37) Annex I is replaced by the text set out in Annex I to this Regulation;

(38) Annex V is replaced by the text set out in Annex II to this Regulation;

(39) Annex VI is replaced by the text set out in Annex III to this Regulation;

(40) Annexes VII, VIII and IX are deleted;

(41) The text set out in IV to this Regulation replaces Annex X.

Article 2

Monitoring and evaluation

1. Three years after [the date of entry into force of this Regulation], the Commission shall produce an evaluation of the application of this Regulation. This overall evaluation shall include an examination of the results achieved against objectives and of the implementation of the provisions of this Regulation.

2. The Commission shall transmit the evaluation referred to in paragraph 1 to the European Parliament and the Council. On the basis of the evaluation, the Commission shall submit, where necessary, appropriate proposals.

Article 3

1. This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.

2. It shall apply from [six months after the day of entry into force].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*