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EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the Union Code on Visas (Visa Code) (recast)

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1. INTRODUCTION

This Impact Assessment (IA) accompanies a proposal for a Regulation on a Union Code on Visas (Visa Code) (recast) which is the core legal instrument of the common visa policy as it establishes harmonised procedures and conditions for processing visa applications and issuing visas. Regulation (EC) No 810/2009 of the European Union and of the Council of 13 July 2009 establishing a Community Code on Visas (Article 57) requires the Commission to send the European Parliament and the Council an evaluation of its application two years after all the provisions of the Regulation have become applicable (5 April 2011). On the basis of this evaluation, it may also submit appropriate proposals for amending the Visa Code.

2. PROBLEM DEFINITION

For the purpose of the IA, three problem areas have been identified: (1) the overall length and costs (direct and indirect) as well as the cumbersome nature of the procedures; (2) insufficient geographical coverage in visa processing; (3) lack of visa or other authorisation allowing travellers to stay more than 90 days in any 180-day period in the Schengen area.

(1) The overall length of the procedure (from the preparation of the application file until the return of the passport with or without the visa) is probably considered the primary deterrent and is the subject of much criticism by visa applicants. At the same time, **Schengen States already find the existing deadlines very tight and have problems respecting them. The majority of travellers consider the overall cost of a visa application equally problematic** (not necessarily the visa fee but the indirect costs). **Schengen States, on their side, claim that processing visa applications in a speedy, client-friendly manner would in many places require additional investment**, which they feel unable to make in times of budgetary constraints. In fact, some Schengen States note that their administrative costs of processing visa applications are currently not even covered by the visa fee. Visa applicants and consulates clearly have conflicting interests regarding these issues, which are unlikely to be resolved in the future. On the other hand, the ever-increasing number of visa applications will lead to further bottlenecks, and the applicants' dissatisfaction with the visa procedure will increase.

The most cumbersome procedures relate to the requirement to lodge the application in person (50% of respondents to the public consultation considered this obligation as a difficulty) and the number (and lack of harmonisation) of supporting documents to be submitted at each application. The Commission has already adopted several implementing decisions establishing harmonised lists of **supporting documents** to be presented by visa applicants in various third countries (non-EU countries), but frequent and regular visa applicants in particular are frustrated that procedural facilitations provided under the Visa Code (waiver of the above-mentioned requirements) do not apply to them.

Consequently, the **main driver of this problem area** is that the same procedures are applied to all applicants, irrespective of their individual situation, even though the Visa Code already provides a legal basis to apply procedural facilitations for applicants known to the consulates. However **consulates do not make sufficient distinction between unknown applicants and those who have a positive visa record (frequent/regular travellers)**. This is (also) due to extensive use of external service providers (ESPs) and commercial intermediaries: in many places, the possibility of putting such distinction into practice is impossible because assessing

the applicant's situation against rather vague notions such as 'integrity' and 'reliability' currently referred to in the Visa Code cannot be done by ESPs or commercial intermediaries.

(2) In the past three years there has been progress in ensuring better **geographical coverage for collecting/processing visa applications**. However, due to the lack of visa collecting/processing presence, lodging visa applications can still be very costly and time consuming in many third countries. In particular, the number of cases where applicants have to travel abroad to lodge the application because the competent Schengen State does not have a consulate or is not represented in the applicant's country of residence needs to be reduced. There are some 900 "blank spots" such as these. Access to consulate/ESPs can also be challenging in countries where all or most of the Schengen States are present in the capital but where many applicants still need to travel long distances to reach them. This is the case in the emerging tourism market countries such as Russia, China and India. Finally, there are still nine third countries subject to the visa obligation where no Schengen States are present for the purpose of collecting/processing visa applications.

With regard to projects aimed at pooling resources, very little progress can be reported. Co-locations and Common Application Centres (CACs) as defined by the Visa Code are hardly used, although the Commission promotes, in particular, the setting up of CACs. There are various reasons for this, one of which is a legislative problem: co-location and CAC as legally defined in Article 41 of the Visa Code do not provide the necessary flexibility for establishing operational structures on the spot.

(3) **There are several categories of third country nationals (TCNs) – both visa requiring and visa exempted - who have a legitimate reason and need for travelling in the Schengen area for more than 90 days in any 180-day period without being considered as 'immigrants'** (i.e. they do not intend to reside in any of the Schengen States for a period beyond 90 days). The main characteristic of these travellers is that they 'tour around' Europe/the Schengen area. **The current legal framework does not provide an authorisation that would cater for these travellers' legitimate needs/itinerary. The most vocal interest group regularly raising this long-standing problem is the live performing industry.** Other categories of **travellers** (pensioners, business visitors, students, researchers) also have a strong interest in being allowed to circulate in the Schengen area for longer than 90 days in any 180-day period.

3. ANALYSIS OF SUBSIDIARITY

The abolition of checks at internal borders requires, among other things, a common policy on visas. Under **Article 77(2)(a) of the TFEU**, the EU has the power and even the obligation to adopt measures relating to the common policy on visas and other short-stay residence permits. The rules for processing short-stay visas are already regulated by a regulation that is directly applicable, i.e. the Visa Code.

The problems described in the IA are unlikely to disappear as they are directly related to the existing provisions of the Visa Code. Some progress can be achieved by enforcing correct implementation. However, introducing procedural facilitations for travellers in a harmonised manner, as well as making considerable progress in increasing the geographical coverage in visa processing, requires EU action, i.e. a review of the Visa Code.

As regards establishing a new authorisation for stays exceeding 90 days in a given 180-day period in the overall Schengen area, the need for intervention at EU level is clear: any

authorisation which would be valid in all of the Schengen States can only be introduced at EU level. **Article 77 of the TFEU** empowers the Union to act on 'short-stay' permits in the Schengen area and **Article 79 of the TFEU** empowers the Union to act on visas and residence permits in the context of legal residence in EU Member States (i.e. for stays beyond 3 months in an EU Member State). It follows that the EU also has competence to introduce an authorisation for stays exceeding 90 days in any 180-day period in the overall Schengen area.

4. POLICY OBJECTIVES

The **general policy objectives** of the proposal are: to foster economic growth in the EU; to ensure more coherence with other EU policies and to maintain the security of the Schengen area.

The **specific objectives** are: to move towards a truly harmonised, genuinely common visa policy; to tailor visa procedures more to the needs of legitimate travellers; and to make the visa procedure more efficient by streamlining the rules.

The **operational objectives**, in light of the problems outlined above, are; to provide mandatory procedural facilitations for "well-known" travellers by making use of the possibilities offered by the Visa Information System (VIS); to increase and rationalise the visa collecting/processing presence in third countries; and to provide the possibility of stays exceeding 90 days in a 180-day period in the Schengen area.

5. POLICY OPTIONS

For the purpose of the IA the following policy packages were drawn up:

Policy package 0 - Status quo: The existing legal framework remains unchanged and on-going activities will continue.

Policy package A: Non-regulatory measures: With respect to *problem area 1*, a range of 'soft law measures' are envisaged aiming to better implement the Visa Code. Concerning *problem area 2*, the funding possibilities from the future Internal Security Fund would be largely promoted by the Commission. Regarding *problem area 3*, since the problem driver is a legislative gap, a non-regulatory option was not developed.

Policy package B-D: These options would require EU level regulatory action to amend the Visa Code. **The policy options are grouped according to their level of ambition (political feasibility) in three packages - minimum, intermediate and maximum.**

For *problem area 1*, **policy package B (minimum)** would introduce mandatory procedural facilitations (i.e. a waiver of the requirement to appear in person to lodge the application; a waiver to present certain supporting documents) and mandatory issuing of MEVs valid for at least one year and subsequently (after two MEVs for 1 year) an MEV for three years for applicants who have previously lawfully used at least three visas (within the previous 12 months prior to the date of the application) that are registered in the VIS ('frequent travellers'). For *problem area 2*, the proposed option would repeal Article 41 of the Visa Code (co-location, CAC) and introduce a general concept of 'Schengen Visa Centre' which would provide a more realistic, more flexible definition of certain forms of consular cooperation. For *problem area 3*, a new type of authorisation would be established, allowing certain categories of applicants (i.e. artists and their crew members) to stay more than 90 days but not more than 360 days in the Schengen area.

Concerning *problem area 1*, **policy package C (intermediate)** envisages mandatory procedural facilitations, similar to the minimum package, and mandatory issuance of MEVs valid for at least three years and subsequently for five years. In addition, the beneficiaries are defined more broadly: applicants who have previously lawfully used at least two visas that are registered in the VIS ('regular travellers'). Regarding *problem area 2*, in addition to the introduction of the flexible concept of 'Schengen Visa Centres', the concept of 'mandatory representation' would also be introduced: when a Schengen State competent to process the visa application is not present nor represented (by virtue of an arrangement) in a certain third country, any other Schengen State present in that country would be obliged to process visa applications on its behalf. Regarding *problem area 3*, as with the minimum package, a new type of authorisation would be established that would apply not only to certain categories of TCNs, i.e. live performing groups, but also to all TCNs (i.e. 'individuals' as well) who can demonstrate a legitimate interest for travelling for a period exceeding 90 days in the Schengen area.

Policy package D (maximum) would extend mandatory procedural facilitations and mandatory issuance of MEVs immediately for five years to the majority of applicants by requiring only one lawfully used visa that is registered in the VIS. Regarding *problem area 2*, in order to ensure adequate visa collecting/processing coverage, Commission implementing decisions would define what the Schengen visa collecting network in third countries should look like in terms of representation arrangements, cooperation with ESPs and pooling of resources by other means. Finally, as regards *problem area 3*, it would introduce the same type of authorisation as in the intermediate package; anything more ambitious is deemed highly unrealistic.

6. ASSESSMENT OF IMPACTS

The procedural facilitations, and, in particular issuing of MEVs with long validity has the potential to lessen the administrative burden of consulates and at the same time provide a very important facilitation to travellers. By making the Schengen area an even more attractive destination, the options would increase the overall number of trips of visa-obliged TCNs whose spending would have a positive impact on the EU economy. As regards problem area 2, the concept of 'mandatory representation' would considerably increase the visa-issuing presence in third countries. It would secure consular coverage in any third country where there is at least one consulate processing visa applications. This concerns some 900 'blanks spots' and could have a positive impact on some 100 000 applicants who would be able to lodge the applications in their country of residence instead of having to travel to a country where the competent Schengen State is present or represented. Finally, the introduction of a new authorisation for stays for a period exceeding 90 days for all TCNs would affect some 120 000 travellers, which at most could lead to an estimated EUR 1 billion additional income to the Schengen area.

As regards the anticipated financial and economic impacts see the table under point 7 for further details.

7. COMPARISON OF OPTIONS

Policy package A would only have a small positive impact on addressing the problems and achieving the policy objectives. Therefore it is not considered very effective.

Policy packages B, C and D would progressively address the problems, meet the operational objectives and have a positive impact on travel to and spending in the Schengen area. Policy package B is the least **effective**; it would partially address the problems to the benefit of a smaller group of visa applicants. Packages C and D are almost equally effective in terms of addressing the objectives. The expected economic benefits are higher in the case of package D (over EUR 3 billion per year), but it is associated with a potentially higher security risk.

As far as **efficiency** is concerned none of the policy packages/options would, in principle involve considerable additional costs¹. In fact, one of the driving forces behind the policy options is to generate savings for both the Schengen States/consulates and the visa applicants. Policy packages B, C and D progressively lead to cost savings for applicants, mainly due to the increasing number of MEVs issued with long validity. From the applicants' point of view, policy package D is the most efficient and policy package B the least efficient. **In each package the economic benefits for the EU as a whole considerably exceed the estimated costs for individual Schengen States.**

The table below presents an overview of the anticipated impact of each policy package².

| Policy option/ Criteria | Non-regulatory package (A) | Minimum regulatory package (B) | Intermediate regulatory package (C) | Maximum regulatory package (D) |
|---|----------------------------|--------------------------------|-------------------------------------|--------------------------------|
| Effectiveness | | | | |
| Mandatory procedural facilitations for certain categories of travellers | 1 | 2 | 3 | 4 |
| Increased and rationalised visa collecting/processing presence in third countries | 1 | 2 | 4 | 4 |
| Possibility to stay longer than 90 days in a 180-day period in the Schengen area, on the basis of a new type of authorisation | 0 | 2 | 4 | 4 |
| Impact on the security of the Schengen area | 0 | 0 | -0,5 | -2 |
| Economic benefits - income from travellers' spending (millions of EUR per year) | - | Ca. 800 | More than 2 000 | More than 3 000 |
| Jobs supported (number of FTEs) | - | Ca. 20 000 | Ca. 60 000 | Ca. 80 000 |
| Efficiency | | | | |
| Direct costs saved by visa applicants (millions of EUR per year) | - | Ca. 50 | Ca. 200 | Ca. 300 |

¹ One exception is the policy option related to the geographical coverage in visa processing.

² 0: no impact; 0-1: small impact, if any; 2: medium impact; 3: high impact; 4: very significant impact. The rating is negative (-) if the impact is negative.

| Policy option/ Criteria | Non-regulatory package (A) | Minimum regulatory package (B) | Intermediate regulatory package (C) | Maximum regulatory package (D) |
|---|---------------------------------------|---|--|---|
| Indirect costs saved by visa applicants (millions of EUR per year) | - | Ca. 120 | Ca. 500 | Ca. 800 |
| Net financial impact on Schengen States (millions of EUR per year) | - | Ca. -1 | Ca. -5 | Ca. -9 |
| Feasibility | | | | |
| Legal | Good | Good | Good | Good |
| Political | Good | Reasonable | Reasonable | Poor |
| Practical | Good | Good | Good | Reasonable |

As far as **problem area 1** is concerned (**lengthy, cumbersome and costly procedures**), the assessment is **inconclusive with regard to what the preferred option should be**. This is because the very high potential economic impact of the proposal in policy package D is however associated with a potentially higher security risk. The proposal in the intermediate package (C) is associated with a low security risk, but its potential economic impact is estimated to be almost EUR 1 billion less. With regard to **problem area 2 (geographical coverage)** and **problem area 3 (new type of authorisation)**, **the options identified in the intermediate package are the preferred ones** (introduction of the new concept of the 'Schengen Visa Centre' and the 'mandatory' representation for problem area 2; new authorisation for stays exceeding 90 days for all TCNs as for problem area 3).

8. MONITORING AND EVALUATION

Three years after the entry into force of the recast of the Visa Code, the Commission will present an evaluation report.