

Revision of the EU visa policy

Impact Assessment (SWD (2014) 68 final, SWD (2014) 67 final (summary)) of a Commission proposal for a Regulation of the European Parliament and of the Council on the Union Code on Visas (Visa Code) (recast) (COM (2014) 164 final).

Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's Impact Assessment (IA) accompanying the above proposal, submitted on 1 April 2014.

The Visa Code established by Regulation 810/2009 is an essential element of the common visa policy the development of which was a pre-requisite to the creation of a common area without internal borders. The Visa Code sets out harmonised procedures and conditions for issuing short-stay visas, so called Schengen visas (authorizing their holder to stay in the Schengen area for up to 90 days in any 180 days period). The Code, which was a recast and consolidation of all relevant legislation on the issuing of short stay 'Schengen' visas, entered into force in April 2010 with the overarching objectives of facilitating legitimate travel and tackling irregular immigration.

Following the Declaration of G20 Ministers at their meeting in Mexico in May 2012 on the potential for growth through facilitated visa procedures, the Commission started reflecting on the economic impact of the visa policy on the wider EU economy. In November 2012, it adopted a Communication on 'the implementation and development of the common visa policy to spur growth'¹, in which it listed issues to be addressed in a future revision of the Visa Code in order to 'improve and facilitate procedures for bona fide travellers while continuing to allow addressing the risk posed for irregular migration or security by some travellers'.

The objective of providing visa facilitations to boost economic growth and job creation was introduced by the Commission Communication against the background of the need to ensure consistency between the visa policy and EU policies in other areas such as tourism, trade, external relations, education and culture, but also in light of the current economic situation and the growth objectives of the Europe 2020 Strategy.

According to a 2012 Commission study on the economic impact of short-stay visa facilitation, a total of 6.6 million potential travellers from six of the countries with the most travellers² were 'lost' due to cumbersome visa procedures. The study also showed that more flexible and accessible visa rules could lead to an increase in trips to the Schengen area ranging from 30 to 60 per cent from these six countries alone. This could mean up to 130 billion euros in total direct spending over five years (accommodation, food and drink, transport, entertainment, shopping etc.) and translate into some 1.3 million jobs in tourism and related sectors.

¹ COM(2012)649 final, 7.11.2012.

² China, India, Russia, Saudi Arabia, South Africa and Ukraine. Study available at http://ec.europa.eu/enterprise/sectors/tourism/international/index_en.htm, IA, p. 9.

Building on an evaluation report on its implementation, the present proposal to amend the Visa Code aims to establish a smarter common visa policy which would increase the attractiveness of the EU, and thus foster economic growth, while ensuring a high level of security of the EU.

Problem definition

On the basis of the Visa Code evaluation report and stakeholder consultations, three problem areas are identified in the IA:

Problem area 1: *The overall length and costs (direct and indirect) and the cumbersome nature of the procedures*: according to the IA, the main driver behind this problem is the fact that the consulates do not sufficiently distinguish between unknown applicants and those with a positive visa record and, for the latter, rarely apply the procedural facilitations provided in the Visa Code (waiving of the requirement to lodge the application in person and to submit certain/all supporting documents, and issuing of multiple entry visas (MEVs) with a validity of up to five years). Other factors include the optional nature of the procedural facilitations and diverging interpretations and implementation of the Visa Code by Schengen States, notably regarding documentary requirements.

Problem area 2: *Insufficient geographical coverage in visa processing*. The IA indicates that, despite progress in increasing the geographical coverage in collecting/processing visa applications, there are still 900 'blank spots' where a Member State is neither present nor represented, thus forcing the applicants to travel abroad to lodge their visa application, which can be very costly and time consuming. In addition, visa collecting presence is often concentrated in the capitals and few big cities only, creating accessibility problems for the applicants. The forms of cooperation offered by the Visa Code to increase geographical presence (co-location or Common Application Centres (CACs)) are rarely used, the Member States not finding them sufficiently flexible.

Problem area 3: *Lack of visa or other authorisation allowing travellers to stay more than 90 days in any 180-day period in the Schengen area*: the Commission explains that there are several categories of third country nationals – 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 as they do not intend to reside for more than 90 days in any Schengen State (mostly live performing artists, but also individual travellers such as pensioners, students, researchers, artists, business people). What characterizes these travellers is that they 'tour around' Europe/the Schengen area. The current legislative framework does not provide an authorization that would cover these travellers' needs.

In the problem tree illustrating the main drivers, problems and their consequences, one can see that no drivers are expressly identified for problem areas 2 and 3. Generally speaking, problem area 1 is described in more detail than the other problem areas and the IA indicates that 'all stakeholders acknowledged that probably the main problem of visa processing relates to the lengthiness of the procedure'³.

The Commission explains that the consequence of the problems described above is a lack of satisfaction of visa applicants with the current visa procedures. This can affect the EU's positive and welcoming image and possibly the travel flows, and thus potentially have a detrimental effect on the EU economy⁴, although this effect cannot be reliably estimated.

The Commission recognises from the outset that it is not in a position to provide reliable quantifiable evidence as to what extent the burden for applicants to obtain visas influences decisions to travel to, and stay within, the Schengen area. Similarly, it explains that, because of a lack of reliable disaggregated data from the Member States, it is unable to provide 'Schengen averages' regarding the overall length of the procedure, visa processing costs for the Schengen States, or the average indirect costs to be borne by applicants. This is because the Visa Code does not require Schengen States to collect data on the costs and length of the procedure or administrative burden.

The description of the scale of the problems set out above largely relies, therefore, on the public and stakeholder consultations that took place in the context of the preparation of this impact assessment, and is

³ IA, p. 15.

⁴ IA, p. 22.

only underpinned by a small amount of concrete evidence (for example, complaint letters to the Commission) or quantitative problem indicators.

The IA explains at great length how the situation would evolve without further action, providing detailed information on the number of expected visa applicants (estimated at 18 million in 2015) and on-going policy developments such as Visa Facilitation Agreements (VFAs), the Visa Information System (VIS), the Entry/Exist System (EES) or the Registered Travellers' Programme (RTP), and their link with the present initiative.

Objectives of the legislative proposal

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 harmonized, 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.

In light of the problems outlined above, the *operational* objectives 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.

Range of options considered

The IA examined the following three policy packages which are made from building blocks. The Commission indicates that the 'preferred package could be a mix of policy options in different packages'⁵.

- **Policy package 0 – status quo:** the existing legal framework remains unchanged and on-going activities will continue.
- **Policy package A: Non regulatory measures:** regarding *problem area 1*, a range of soft law measures are envisaged in order to better implement the Visa Code, in particular by adding additional guidelines and good practices to the Visa Code Handbook concerning procedural facilitations and the issuing of multiple entry visas (MEVs) with long(er) validity for 'bona fide' applicants. With respect to *problem area 2*, the Commission would promote the funding possibilities from the future Internal Security Fund in order to encourage Schengen States to set up consular cooperation projects. A non-regulatory option could not be developed for *problem area 3* since the problem driver is a legislative gap.
- **Policy package B-D: Reviewing the Visa Code:** EU level regulatory action is required. The policy options are grouped according to their level of ambition (political feasibility) in three packages: minimum, intermediate and maximum:
 - **Policy package B:** (minimum): with regard to *problem area 1*, it would introduce mandatory procedural facilitations (waiving of the requirement to lodge the application in person (on-line applications) and waiving of the requirement to submit certain supporting documents) and mandatory issuance of MEVs valid for at least one year, and subsequently for three years, for *frequent* travellers. These are defined as applicants who have previously lawfully used at least three visas (within the previous twelve months prior to the date of application) that are registered in the VIS. With respect to *problem area 2*, it would repeal article 41 of the Visa Code regarding co-location and CACs and introduce a general concept of 'Schengen Visa Centre', which would allow a more flexible definition of certain forms of consular cooperation. For *problem area 3*, a new type of authorization would be established allowing certain categories of travellers (artists and sportsmen and their crew as well as core family members) to stay more than 90 days in any 180 day period, but not more than 360 days in the Schengen area.

⁵ IA, p. 33.

- o **Policy package C:** (intermediate): concerning *problem area 1*, it foresees the same procedural facilitations as in the case of the minimum package and mandatory issuance of MEVs valid for at least three years, and subsequently for five years, for *regular* travellers, defined as applicants who have previously lawfully used at least two visas that are registered in the VIS. Regarding *problem area 2*, in addition to the introduction of the flexible concept of 'Schengen Visa Centre', it would introduce an obligation to represent Schengen States that are not present or represented by virtue of a representation arrangement in third countries ('mandatory representation'). For *problem area 3*, as with the minimum package, a new type of authorisation would be established allowing all applicants (and not only certain categories as in the minimum package) fulfilling specific conditions to stay for more than 90 days in any 180 day period in the Schengen area.
- o **Policy package D:** (maximum): regarding *problem area 1*, it 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 or use of external service providers etc. Regarding *problem area 3*, it would introduce the same type of authorization as in the intermediate package, anything more ambitious being deemed disproportional.

The following options were discarded from the outset: waiving of the visa requirement (discarded for security reasons); visa issuance at the border (because it does not allow for in-depth verifications); increasing or decreasing the general visa fee (because it would not be a win-win solution for both parties); fast-track/premium service for visa processing (because of the necessity to ensure an equal treatment of the applicants); establishment of common EU visa issuing offices (because this requires a fully harmonised and integrated procedure and the transfer of the decision making power from the Schengen States to an EU body).

The IA makes a very clear presentation of the options which are mapped, as seen above, against the main problem blocks that they address.

Regarding the options foreseen for *problem area 1*, the IA clarifies that the issuance of MEVs with long validity was considered the only win-win solution for both visa applicants and consulates⁶ as it would reduce the workload of consulates while providing important facilitations for certain categories of applicants. The underlying logic is to distinguish, on the basis of objective criteria (3, 2 or 1 visas registered in the VIS), between unknown applicants and those with a positive visa record, and to make the granting of long validity MEVs and procedural facilitations mandatory for the latter. Consequently, first time visa applicants are not concerned⁷, the Commission explaining that the introduction of one of these options would 'leave intact the existing provisions on supporting documents and lodging the application in person for first time/unknown applicants who should undergo an in-depth verification'⁸. However, consulates would still have the discretion to grant similar facilitations to first time applicants. According to the Commission, first time applicants will be indirect beneficiaries of the measures in the sense that the reduction in the workload of consulates will have a spill-over effect since such applications would be processed faster. As to *problem areas 2 and 3*, first time applicants are as equally concerned as frequent/regular travellers.

In the comparison of options, the IA concluded that policy package A would only have limited positive impact and would not be very effective as it would still leave too much discretion to the Member States.

⁶ IA, p. 38.

⁷ The proposal for Regulation however includes measures that would benefit first-time applicants with no record in the VIS, such as the reduction of the time limit for examining applications from 15 to 10 calendar days, clearer rules on the determination of the competent Schengen State, and information to the public on the visa application procedure.

⁸ IA, p. 39.

Regarding *problem area 1*, the IA is inconclusive with regard to what the preferred regulatory option should be. For *problem areas 2 and 3*, the intermediate package (policy package C) is the preferred one.

Scope of the Impact Assessment

With the exception of the 'status quo' option (the impacts of which were considered almost equivalent to the impacts of the non-regulatory package and were therefore not analysed to avoid repetition), all policy packages were assessed for the extent to which the proposal contributes to meeting the operational objectives; for their impacts on the applicants (including costs); their impacts on the Schengen states (including administrative costs); their impacts on the security of the Schengen area, as well as consistency with other EU policies; their impacts on the Commission (and EU delegations); for the economic benefits and growth that may accrue (economic impact), and against considerations on the political, legal and practical feasibility, in particular in view of the likely position of stakeholders and the Parliament.

The environmental impacts were not assessed, although the Commission recognises that tourism activity generates certain costs such as congestion or pollution⁹. As far as social impacts are concerned, these are only assessed within the economic impacts, in terms of additional full time jobs resulting from the estimated increase in the number of trips to the Schengen area. The cultural, educational or trade aspects, while recognized in the IA, are not analysed. The potential risk of employment on the black market of holders of the new authorization (in case they run out of money when touring Europe, for example) are not assessed, the Commission considering this as speculation. Also, neither the possibility that the new authorization attracts certain types of criminal behaviour (although mentioned in the study supporting the IA¹⁰), nor the difficulties in monitoring whether travellers respect the limits on the period of stay, notably in the case of visa exempted third country nationals, is examined.

Similarly, the potential security/migratory risks associated with the issuing of MEVs with longer validity, as alleged by Member States, and visa overstays, are not discussed. The Commission assumes that it is unlikely that frequent or regular travellers would intend to commit crimes, given that they could have done so during their previous visits. Considering that the purpose of the proposal is to foster economic growth while preserving the current level of security of the EU, one might have expected more thorough discussions on the link between security and the options described (especially if the decisions are solely based on the frequency rate of travel by applicants) and clearer explanations on the security rating of each option.

Regarding economic benefits, the IA provides very precise figures on the economic benefits of each policy package resulting from the increase in the number of trips to the Schengen area and the additional income derived from increased spending and associated additional jobs. Annex 8 of the IA includes detailed explanations on the nature of the economic benefits and how the financial and economic impacts of the policy options were calculated. For example, the regulatory options relating to *problem area 1* would result in some 300 million euros additional income and 7600 full time equivalent (FTE) jobs under the minimum package (B), to more than 1 billion euros additional income and approximately 30 000 FTE jobs under the intermediate package (C), and to 2 billion euros additional income and 50 000 FTE jobs under the maximum package (D)¹¹. It is estimated that the direct and indirect costs saved by applicants as a result of not having to lodge the application in person and not paying visa fees (as a result of the issuing of MEVs) amount to about 190 euro per visa application¹². The introduction of a new authorization for stays for a period exceeding 90 days for all third country nationals would affect some 120 000 travellers, which at most could lead to an estimated 1 billion euro additional income to the Schengen area. The IA indicates that a fee would be introduced for this new type of authorization but no further information is provided in this regard. As for 'mandatory representation', the IA indicates that it has the potential to involve around 100 000 applicants

⁹ IA, p. 76.

¹⁰ http://ec.europa.eu/dgs/home-affairs/e-library/documents/categories/studies/index_en.htm

¹¹ IA, p. 77-79.

¹² IA, p. 78.

(mostly from African countries) and lead to approximately 25 000 additional applications per year which would generate an additional income per year to the EU of 13 million euros¹³.

Subsidiarity / proportionality

The proposal is based on article 77 (2) (a) of the TFEU under which the EU is entitled –if not obliged- to adopt measures relating to the common policy on visas and other short-stay residence permits. The rules for processing short stay visas are defined in the Visa Code Regulation. Since the problems described in the IA are directly related to the existing provisions of the Visa Code, the Commission considers a revision of the latter to be necessary in order to introduce procedural facilitations for travellers in a harmonised manner and to increase geographical coverage in visa processing.

As for the establishment of a new authorization for stays exceeding 90 days in any 180 day period, the Commission argues that it follows from the combined reading of article 77 of the TFEU and article 79 of the TFEU (which empowers the Union to act on visas and residence permits in the context of legal residence in EU Member States) that the EU has competence to introduce such an authorization and that this can only be introduced at EU level given that it should be valid in all of the Schengen States.

The proportionality principle is not discussed in the IA. No reasoned opinion has been submitted by any of the national parliaments.

Budgetary or public finance implications

The proposed amendment to the Visa Code does not have implications for the EU budget. However, according to the IA, it will have a small negative financial impact on Schengen States, given that the decline in the number of (single entry) visa applications will entail a loss of income resulting from reduced visa revenues. This loss of income amounts to one million euros under policy package B, five million euros under policy package C and seven million euros under policy package D. The Commission argues, however, that this loss of revenue will be accompanied by lower administrative costs as less visa applications will need to be processed. The Commission considers that in each package the economic benefits considerably exceed the estimated costs for Schengen States.

SME test / Competitiveness

No SME test was performed. However, the IA indicates in the executive summary sheet that businesses, in particular in the tourism and hospitality sector, will be affected as a result of the expected increase in trips to the Schengen area and related spending. SMEs having visa-obliged third country nationals business partners could be positively affected as their business partners would have facilitated access to the Schengen area. Annex 6 of the IA contains an overview of the visa processing of certain non-Schengen countries (Australia, Canada, Japan, UK and US) and the Commission indicates that, in the context of the IA, information has been collected regarding several aspects of their visa procedures. However, it explains that 'it is difficult to draw a general conclusion whether the existing EU rules are 'competitive' or not in comparison to non-Schengen States' visa policies' as 'there are no international benchmarks in this regard'¹⁴.

Simplification and other regulatory implications

The proposal recasts and amends Regulation (EC) n° 810/2009 on the Visa Code with a view to taking into account the increased attention given to the economic impact of visa policy on the wider EU economy and to ensuring greater consistency with the growth objectives of the Europe 2020 strategy. On the basis of the evaluation report of the Visa Code Regulation and stakeholder consultations, the proposed initiative aims to make travel easier for legitimate travellers and to simplify the legal framework in the interest of Member States.

¹³ IA, p. 45 and 79.

¹⁴ IA, p.25.

Relations with third countries

The impacts on third countries are not specifically assessed, the Commission merely indicating that ‘the impact on third countries in principle will be proportionate to the impact on its nationals (visa applicants)’¹⁵.

Quality of data, research and analysis

The IA is based on a series of studies, reports, consultations and workshops (notably on artists’ mobility and visas). The most important sources of information include: the results of the online public consultation on the implementation of the Visa Code from the applicants’ perspective, which ran from March to June 2013; the study specifically commissioned for the purposes of the review of the Visa Code (IA study), and a study commissioned by DG Enterprise on the economic impact of visa facilitation on the tourism industry and on the economies of Schengen States (Economic Impact Study). The limitations of this latter study are explicitly recognised in the IA. OECD surveys on the impact of visa facilitations on tourist flows were also taken into account.

The IA is presented in a very coherent and clear manner and is accompanied by several annexes, notably on visa statistics across the Schengen States as well as on the approach to the estimates of financial and economic impacts. The IA is substantiated wherever possible with available evidence. In this regard the IA contains a disclaimer on the data used in which it explains that reliable data are missing with regard to many issues, including basic ones such as the number of visas for which applications are submitted for different travel purposes; the length of validity of MEVs, or the nationality of the applicants. This is because the Visa Code did not require Member States to collect such data, but also because the security related objectives were until recently the focus of the visa policy. The Commission therefore clearly acknowledges the uncertainty surrounding the economic and financial impacts of the proposals.

Further discussions on the security/migratory issues mentioned above, but also further insights into the social, cultural, educational and trade aspects of increased third country nationals visits to the Schengen area, would have been useful. Finally, regarding the calculation of economic impacts, the choice of a multiplier of 1.3 at Schengen level is not explained.

Stakeholder consultation

As indicated above, an online public consultation took place between March and June 2013 which gathered 1084 responses, the majority from Belarus, followed by Turkey and Ukraine. 40 written contributions were received from a wide range of stakeholders such as artists, young people, seafarers, business associations and academics. The results of the public consultation are presented in annex 4 of the IA. Several stakeholder consultations were also carried out in the framework of the IA study. Discussions also took place with Schengen States’ delegates in the Council Visa Working Party and in the Visa Committee. The views of third countries with regard to the visa application process were also collected through various meetings at EU level.

The IA makes a very clear presentation of the views of the Member States and key stakeholders on each identified problem and option. It appears that while Schengen States are looking favourably upon harmonising procedural facilitations and agree that the boosting of the issuance of MEVs with long(er) validity is a win-win solution for the applicants and Schengen States, they are reluctant towards the idea of the mandatory issuance of long validity MEVs. They also do not see the insufficient geographical coverage as a problem. Some Schengen States have indicated that consular presence is a matter of national sovereignty and therefore oppose the principle of ‘mandatory representation’. As for the introduction of the new type of authorisation for stays exceeding 90 days, the majority of the Schengen States are not in favour of this option as they consider all stays beyond 90 days as long term stays, and thus as a matter of national competence. Schengen States also did not consider this a priority issue, given the limited group of applicants it would concern. On the other hand, NGOs, interest groups, business and professional associations do welcome the

¹⁵ IA, p. 40.

mandatory issuance of MEVs with long(er) validity, as well as the envisaged procedural facilitations. They also support the introduction of the new type of authorisation and are in favour of any measure which leads to better geographical coverage in visa processing/collecting.

Monitoring and evaluation

An evaluation report will be presented by the Commission three years after the entry into force of the recast of the Visa Code. In order to collect monitoring indicators, the relevant articles of the Visa Code will be modified to oblige Member States to provide more detailed statistical information. The IA includes a table with potential indicators and methods for data collection according to each area of interest.

Commission Impact Assessment Board

The Commission Impact Assessment Board (IAB) delivered a positive opinion on the draft IA on 4 September 2013. This made a number of recommendations for improvement, the vast majority of which appear to have been taken into account in the present version of the IA.

Coherence between the Commission's legislative proposal and the IA

It is important to note that the proposal under consideration for a recast of the Visa Code only covers the first two problem areas identified in the IA, that is: a) the overall length and costs (direct and indirect) and the cumbersome nature of the procedures, and b) the insufficient geographical coverage in visa processing. According to the explanatory memorandum of this proposal, the third problem area, i.e. lack of visa or other authorisation allowing travellers to stay more than 90 days in any 180 day period in the Schengen area, will be covered by a separate Regulation establishing a touring visa. It nevertheless suggests that the two instruments might be merged if adoption within a similar time-frame seems possible. The choice of splitting the proposals in this way is not discussed in the IA.

As far as the Visa Code proposal is concerned, it is based on the intermediate policy package (C). It is interesting to note that the proposal provides for a reduction of the time limit for examining applications from 15 to 10 calendar days, whereas the IA, on the other hand, indicates that 'Schengen States already find the existing [deadlines] very tight enough *[(sic)]* and have problems respecting them'¹⁶. It also goes on to say that 'by changing some of the specific elements of the procedure, e.g. [...]increasing or decreasing the time for processing the applications, it would not be possible to tackle [the identified problems] both for the benefit of the applicants and the consulates'¹⁷.

Conclusions

The problems to be addressed are explained in a very clear manner, as is the presentation of the options. Uncertainties are recognised and considerable effort has been made to substantiate the IA with concrete evidence, even though this has proved difficult for well explained reasons. Member States' concerns regarding security issues linked with the mandatory MEVs with long validity or the new 'touring' authorization, could have been better explained, however. Also, the fact that the proposal under consideration provides for a reduced time limit for examining applications seems surprising given the suggestion in the IA that this would not be an effective solution. Finally, putting aside the fact that the IA itself does not consider the creation of two separate legal instruments, it is not clear why the IA was not presented with both proposals jointly as a package, given that it covers the visa issue as a whole.

¹⁶ IA, p. 14.

¹⁷ IA, p. 38.

This note, prepared by the Ex-Ante Impact Assessment Unit for the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament, analyses whether the principal criteria laid down in the Commission's own Impact Assessment Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.

This document is also available on the internet at: www.europarl.europa.eu/committees/en/studies.html

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