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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

A SMARTER VISA POLICY FOR ECONOMIC GROWTH

{SWD(2014) 101 final}

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Evaluation of the implementation of regulation (EC) No 810/2009 of the European Parliament and the Council establishing a Community Code on Visas (Visa Code)

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1. INTRODUCTION

A common visa policy is a fundamental component of the creation of a common area without internal borders. The Schengen *acquis* on visa policy established in the framework of the Schengen intergovernmental cooperation was incorporated into the institutional and legal framework of the European Union following the entry into force of the Treaty of Amsterdam¹.

The Visa Code² sets out harmonised procedures and conditions for issuing short-stay visas. The Code was a ‘recast’ and consolidation of all legal acts governing the conditions and procedures for issuing short-stay visas and repealed obsolete parts of the ‘Schengen *acquis*’. The recast covered the ‘Common Consular Instructions’, as well as parts of the Schengen Convention and 11 ‘Schengen Executive Committee’ Decisions. Additionally, the Joint Action 96/197/JHA of 4 March 1996 on airport transit arrangements was incorporated into the Union legal framework.

Consolidation, and therefore simplification, of the legal framework was one aim of the Visa Code. Another was to facilitate legitimate travel and to tackle irregular immigration through further harmonisation of the way in which local consular missions of the Member States deal with visa applications. The aim of facilitating legitimate travel was to be achieved, *inter alia*, on the premise that frequent and regular travellers known to consulates should be able to get a visa more easily than unknown, first-time applicants.

The main procedural facilitations concern the issuing of multiple entry visas and lighter requirements for supporting documents. The Visa Code thus allows differentiated treatment of applicants on the basis of their ‘visa track record’. It is also intended to ensure that similar cases are dealt with in a similar way.

The need to facilitate travel to Europe in a secure environment has gained increased political attention since the adoption of the Visa Code. To this end, the EU is currently engaged in Visa Liberalisation Dialogues with a number of partner countries and more such dialogues are likely to follow in the coming years. In addition, the EU has concluded nine Visa Facilitation Agreements (VFAs) with partner countries³. These can be considered as a first step towards visa liberalisation and show the EU’s commitment to promote mobility and to facilitate travel to Europe for a broader range of third country nationals. It is in the EU’s interests to be ‘open’ to visitors, as travellers contribute to economic growth. Furthermore, contacts between peoples and cultures promote mutual understanding and intercultural dialogue.

A recent study⁴ on the economic impact of short-stay visa facilitation concludes that the number of travellers deterred from coming to the Schengen area by current visa requirements for the six third countries examined represents a significant direct, indirect and induced lost contribution to GDP. A conservative estimate of this annual loss is EUR 4.2 billion, while a probable estimate is EUR 12.6 billion. This implies about 80 000 lost jobs from both direct

¹ (Article 62(2)(b); now Treaty on the Functioning of the European Union (TFEU), Article 77(2) (a)).

² Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas, OJ L 243, 15.9.2009, p. 1.

³ Such VFAs are typically linked with readmission agreements.

⁴ http://ec.europa.eu/enterprise/sectors/tourism/international/index_en.htm

and indirect effects in the Schengen Area under the conservative estimate and about 250 000 under the probable scenario.

The Visa Code has greatly improved Schengen visa procedures since its entry into force three years ago, but the world has not stood still, and objectives and priorities have evolved (see for example 2.2.1 below). The need to ensure more consistency among the Union's policies (e.g. according to Article 167 of the Treaty on the Functioning of the European Union the Union shall take cultural aspects into account in its action under other provisions of the Treaties) as well as the current economic outlook have led to the addition of 'generation of growth' as another objective of the common visa policy. In this context, more coherence should also be ensured with trade policies. The latter could for instance be achieved by taking into account trade relations, including trade agreements, when considering negotiating visa facilitation agreements. This report has been drawn up against this background. It identifies further improvements that can be made to achieve a smarter common visa policy, which also increases the attractiveness of the EU for business, researchers, students and artists and culture professionals and which responds to current and future challenges.

2. OBJECTIVES OF THE VISA CODE AND PREVIOUS ASSESSMENTS

2.1. Objectives of the Visa Code

The main objective of the Visa Code is to establish the conditions and procedures for issuing visas for transit through the Schengen area, or intended stays in it, for short stays as well as for transit through the international transit areas of airports. In addition, the Visa Code is intended to facilitate legitimate travel and tackle irregular immigration. To achieve its aims, as stated in the explanatory memorandum⁵ of the Commission's 2006 proposal, the Visa Code should:

- *'improve consular organisation and cooperation (also in view of the roll out of the Visa Information System(VIS))⁶;*
- *strengthen procedural guarantees*
- *reinforce the equal treatment of visa applicants by clarifying a number of issues in order to enhance the harmonised application of the legislative provisions.'*

Article 57(1) of the Visa Code requires the Commission to report to the European Parliament and the Council on the Visa Code's application two years after all provisions have become applicable (i.e. on 5 April 2013), with an examination of the results achieved against the objectives and of the implementation of the Regulation's provisions. This report, based on

⁵ COM(2006) 403 final/2.

⁶ Originally the VIS was to become operational in 2007, and therefore the Commission chose to present a separate legal proposal establishing the standards for the biometric identifiers to be collected and providing for a series of options for the practical organisation of Member States' diplomatic missions and consular posts for the enrolment of biometric data from visa applicants as well as for a legal framework for Member States' cooperation with external service providers. The content of the finally adopted Regulation (OJ L 131, 28.5.2009, p. 1) was inserted into and adapted to the structure of the Visa Code adopted in July 2009.

detailed evaluation of the implementation of the Visa Code set out in the Commission Staff Working Document⁷ (CSWD) meets that obligation and suggests ways to address the objectives that have not been fully achieved and the identified problems of implementation.

2.2. Previous assessments

The Commission anticipated this evaluation of the implementation of the Visa Code by publishing in November 2012 a Communication on the ‘Implementation and development of the common visa policy to spur growth’ and a ‘Report on the functioning of Local Schengen Cooperation during the first two years of implementation of the Visa Code’.

2.2.1 Implementation and development of the common visa policy to spur growth⁸

In the light of the Declaration of G20 Ministers at their meeting in Mérida, Mexico in May 2012 on the potential for growth through facilitated visa procedures, the Commission initiated considerations on the economic impact of visa policy on the wider EU economy. It focused in particular on tourism, and how policy could be organised to ensure greater coherence with the Europe2020 strategy’s growth objectives.

The purpose of the common visa policy is, together with the common rules on checks at external borders, to support the abolition of controls at internal borders, i.e. the creation of the ‘Schengen area’⁹. The primary objective of the visa policy has been to facilitate travel for legitimate travellers and to prevent irregular migration and safeguard public order and security. However, the current economic downturn has highlighted the need for the common visa policy to also address potential for generating economic growth.

The Communication, on the one hand, established that ‘*compared with the situation before its adoption, the Visa Code represents a fundamental progress in that it greatly improves the visa procedures*’, listing a number of substantial improvements as regards the legal provisions. However, it concluded, on the other hand, that ‘*there is ... room for improvement, as the optimal implementation of the Visa Code has not yet been achieved across the board*’ and that ‘*most of these obstacles [to facilitating the visa issuing procedure] can be removed by a correct implementation of the Visa Code by Member States’ consulates to be monitored by the Commission*’. The Communication also listed issues to be addressed in a future revision of the Visa Code 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.*’

2.2.2 Report on the functioning of Local Schengen Cooperation during the first two years of implementation of the Visa Code¹⁰

The provisions of the Visa Code apply universally. However, the co-legislators have acknowledged the need to take local circumstances into account while ensuring harmonised application of general legal provisions. Article 48 of the Visa Code sets out the legal framework for local Schengen consular cooperation (LSC), thus making coherent cooperation

⁷ SWD(2014) 101.

⁸ COM(2012) 649.

⁹ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/index_en.htm.

¹⁰ COM(2012) 648.

among Member States¹¹ at local level an essential part of implementing the common visa policy.

This cooperation is currently limited to assessing the need to adapt certain provisions to local circumstances, particularly as regards the supporting documents applicants need to submit. In case of a positive assessment, the common ‘local’ rules are to be adopted by the Commission via an implementing decision. However, this work on the core task of LSC — which is also most visible to the general public — regarding harmonisation on supporting documents has so far only led to the adoption of six Commission Implementing Decisions covering 15 third countries and one EU Member State.

This shows that the strengthened legal framework has not had the intended results. There is a lack of understanding of the added value of LSC and Member States need to commit to this collective task. These findings were confirmed by the annual reports compiled for the period 2012-2013. Therefore, it is essential to reinforce the LSC legal framework, as the lack of consistency in practices among Member States in the same location is a significant source of complaints and frustrations among visa applicants irrespective of nationality, profession or status.

The Commission proposes that mandatory rules for the harmonisation of supporting documents within LSC be introduced. The new Schengen Evaluation Mechanism that will become applicable in 2015 and which provides for the possibility of conducting thematic evaluations, can be instrumental for enforcing the provisions on LSC.

Currently, annual reports are to be drawn up in each location and the Commission is to transmit these to the European Parliament and the Council to ensure full transparency.

The Commission proposes to draw up one comprehensive annual state of affairs report on LSC, to be shared with the co-legislators, to ensure consistent transparency.

3. OVERALL IMPLEMENTATION OF THE VISA CODE

3.1. General considerations

Although it is not possible to prove the direct impact of the Visa Code on the number of short stay visas applied for and issued in the period 2010–2012, clarification of the legal framework has contributed to a significant increase in the number of visa applications. Between 2009 and 2012, the global number of applications increased by 48%, with an annual increase of around 15%. With only a few exceptions¹², Member States have experienced an increase in the

¹¹ Throughout this document, unless otherwise specified ‘Member States’ refers to EU Member States applying the common visa policy in full (all EU Member States with the exception of Bulgaria, Croatia, Ireland, Cyprus, Romania and the United Kingdom) and the associated states, Iceland, Liechtenstein, Norway and Switzerland.

¹² For Austria the overall increase in this period was only 1.5% and for Slovenia a decrease of 58.5% was registered; both situations are likely to be linked to the abolition of the visa requirement for nationals of most Western Balkan countries in 2009 and 2010. .

number of visa applications processed each year. Over the same period, the global refusal rate fell¹³, though there were large differences between regions of the world¹⁴.

The overall objective of tackling irregular immigration is generally considered to have been met. Neither the Member States nor the results of studies and of the public consultation identify security risks or problems arising from the Visa Code or its implementation. Of course, a high level of security must be maintained when proposing any new facilitation for legitimate travellers. The contribution to security flowing from the roll-out of the Visa Information System (VIS), which started in October 2011 and should be completed in the course of 2015, should also be taken into account.

3.2. Lack of statistical data

Adequate, reliable and comparable statistics are a prerequisite for evidence-based evaluation of the implementation of legislation and its efficiency and effectiveness.

Article 46 establishes that Member States must submit annual statistics for the preceding year to the Commission. Annex XII sets out the data to be submitted (e.g. type of visa, number of visas applied for/issued/refused, single or multiple entry).

Although the data supplied by Member States have been useful to assess the implementation of certain elements of the Visa Code, the lack of disaggregation makes it difficult to assess the impact of certain provisions. For instance, for multiple entry visas (MEVs), only total numbers are collected, without taking into account length of validity. So the totals cover MEVs valid for periods varying from two weeks up to five years. Data are collected on the basis of location (i.e. where the visa was applied for/issued) and the type of visa applied for (short stay or airport transit visa), but data on the nationality of the applicant or the purpose of travel are not available. So it is impossible to monitor trends, for instance, in the number of visas applications for the purpose of tourism.

The Commission proposes to review Annex XII to ensure the collection of more detailed data enabling appropriate evaluation of the achievement of objectives in future.

3.3. Evaluation per specific objective

3.3.1. Simplification of the legal framework

The integration of all legislation regarding the processing of short-stay visa applications and the modification of issued visas into a single instrument has clearly contributed to simplifying legislation, improving transparency and increasing legal certainty.

3.3.2. Strengthening the legal framework to enhance the harmonisation of practices

The objective of establishing a clear, legal framework for the common visa policy regulating stays of up to 90 days in any 180-day period has generally been met. However, the

¹³ 2010: 5.8 %; 2012: 4.8 %.

¹⁴ From a refusal rate of 1 % in the Russian Federation to 44 % in Guinea.

Commission has had its attention drawn over the years to the situation of third country nationals who have legitimate reasons to **stay more than 90 days in any 180-day period** (section 2.1.9. CSWD). Such persons, whether or not subject to the visa requirement, wish to stay in the Schengen area for a period exceeding 90 days without intending to stay in any one Member State for more than 90 days.

This category of persons typically includes live performing artists who tour in the Schengen area for a prolonged period, but also individual travellers, such as, for example, artists, culture professionals, students and pensioners. As they are eligible neither for a national long-stay visa nor a short-stay Schengen visa or other authorisation, they find themselves in a legal vacuum. This situation often leads Member States into ‘creative’ use of certain legal instruments. Rather than turning a blind eye to such practices, the Commission proposes to introduce a specific authorisation that would cater for the needs of these persons.

The Commission proposes a legal instrument establishing a new authorisation for stays in the Schengen area longer than the current 90 days per 180 days limitation.

3.3.3. Strengthening procedural guarantees and ensuring equal treatment and transparency

The results of the public consultation¹⁵, the economic impact study referred to above and individual complaints suggest that the objectives of **procedural guarantees** have not been sufficiently met. Both individual applicants and professional stakeholders have found certain application procedures **lengthy, cumbersome and costly**.

Any visa application begins with the need for the applicant to identify **which Member State is competent to process the application** (2.1.1.1., paragraph (1) CSWD). There are clear, objective criteria setting out which Member State is competent to examine an application. However, in practice, this has proven to be rather challenging for applicants and consulates alike in cases where the applicant wishes to travel to several Member States on one visa. The current rules are apparently confusing and applicants often have a negative first experience with the Schengen visa policy.

The next step in the process concerns filling in the **application form** (2.1.1.2, paragraph (10) CSWD). Although the form does not generally give rise to many problems, it could still be simplified. For instance, it could be revised to drop the requirement for information currently requested that would actually be available in VIS, taking into account the roll-out of the system. A better explanation for applicants on how to fill in the form would also be helpful.

The Commission proposes that the rules regarding ‘competent’ Member State be clarified and that the application form be simplified.

The requirement on **‘lodging in person’** (section 2.1.1.1., paragraphs (7) — (9) CSWD) has been identified as a major obstacle because it is often extremely cumbersome. In some cases, it requires applicants to travel to a neighbouring country, because the competent Member State is not present/represented in their country of residence. Such travel obviously raises the overall costs for applicants. Although Member States allow applicants to lodge the application

¹⁵ http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2013/consulting_0025_en.htm.

at an external service provider (ESP) or via a commercial intermediary, known applicants are seldom granted optional waivers from ‘lodging in person’.

So far, the general rule has been that a visa application should be lodged in person at a consulate or an ESP. The progressive roll-out of the VIS will mean that first-time applicants will in any event have to go to a consulate or an ESP to have their fingerprints taken.

But most Member States face a rise in applications, combined with cuts in public spending. This has led to more use of external service providers for the collection of visa applications, accreditation of commercial intermediaries (i.e. travel agencies/tour operations) who lodge applications on behalf of (groups of) visa applicants, and individual Member States waiving the requirement for well-known applicants to lodge their applications in person.

This seems to indicate that visiting the consulate tends to become the exception. In certain consulates, only 30% of visa applications are ‘lodged in person’. Judging by information gathered in Schengen evaluations, personal interviews are rarely carried out when an application is lodged. On the other hand, in keeping with developments in modern technology, Member States are increasingly allowing applicants to submit their applications electronically.

Currently, applicants may lodge their applications **not earlier than three months** before their intended trip (section 2.1.1.1, paragraph (5) CSWD). This deadline poses problems for seafarers (see also p. 11) and persons wishing to avoid peak times with long waiting periods. In the interest of both applicants and consulates, it should be allowed to lodge an application up to six months ahead of the intended trip.

The Commission proposes to abolish the principle of ‘lodging in person’ (without prejudice to the requirements on the collection of fingerprints for first time applicants) while maintaining the possibility of conducting an interview. It also proposes to clarify the rules allowing for on-line submission of applications and to allow all applicants to lodge their applications up to six months ahead of the intended trip.

Once an application has been lodged, various deadlines start running. Although the deadline for a decision is usually met, if the third country concerned is under **prior consultation** (2.1.1.5, paragraph (20) CSWD) this mechanism can mean processing takes longer. However, better IT systems enable a shorter response time in case of prior consultation than the current seven calendar days. A shorter deadline for a decision should equally be possible.

The Commission proposes to review the maximum deadlines, including the response time for prior consultation, which should be decreased to five calendar days.

The Visa Code includes provisions designed to streamline and shorten procedures, enabling procedural facilitations for applicants known to the consulate for their ‘integrity’ and ‘reliability’, including the lawful use of previously issued visas. However, these potential facilitations, which should apply in particular as regards the requirements concerning supporting documents and the issuing of multiple entry visas (MEVs), are not applied by Member States in a uniform and consistent manner.

Most applicants find it a burden to have to provide a large number of **supporting documents** (2.1.1.2, paragraph (12) CSWD) repeatedly to prove they fulfil the entry conditions. Many complain that requirements differ from consulate to consulate in the same third country, even when the travel purpose is the same.

According to the Visa Code, applicants known to consulates for their ‘integrity’ and ‘reliability’ may benefit already from certain procedural facilitations (waiving of the requirement to lodge the application in person and to submit certain/all supporting documents). However, Member States do not seem to be systematic in the way they grant waivers for known applicants. This is mainly due to the fact that this is a ‘may’ clause and that the eligibility criteria of ‘integrity’ and ‘reliability’ have not been defined. In addition, about 70 % of all applications are lodged via an external service provider that is not allowed to make a qualitative assessment of the application/applicant.

The added value of the requirement to present ‘**travel medical insurance**’ (2.1.1.2, paragraph (14) CSWD) is questionable. It should therefore be abolished.

The Commission proposes that an exhaustive and simplified list of supporting documents be established and that the travel medical insurance requirement be abolished.

Although the article in the Visa Code on issuing of **multiple entry visas (MEV)** (2.1.1.6, paragraph (24) CSWD) is a ‘shall’ clause, it is undermined by the discretionary assessment of eligibility conditions for a MEV, which again include the notions of ‘integrity’ and ‘reliability’. In addition, the public consultation showed that Member States’ consulates seem to be reluctant to issue MEVs valid for longer than six months. So while consulates should in principle issue MEVs with a period of validity of up to five years to the categories of persons enumerated in the article (who are, essentially, regular travellers and therefore ‘known’), the margin of discretion left to consulates, combined with their reluctance to issue MEVs with a long period of validity, means that far fewer MEVs with long validity are issued than could potentially be the case.

This is unfortunate, as a MEV is the most important and easiest facilitation travellers can get. Issuing more MEVs would also ease the administrative burden for both applicants and consulates. Strengthening the article on MEVs would provide remedies for many of the problems that have been identified in the public consultation and various studies. Applicants in particular would not have to go through repetitive application procedures. In practice, however, consulates make little or no distinction among applicants: first-time applicants are often treated in the same way as regular travellers.

The availability of the VIS, which is being progressively rolled out and should be fully operational worldwide in the course of 2015, could facilitate distinguishing among applicants as all data related to their visa applications will be entered into the system and can be consulted by all Member State consulates. Data remain stored in the VIS for five years. It will be easy to distinguish between the first-time, ‘unknown’ applicant not yet registered in the VIS with no ‘visa history’, and the applicant who already has his/her data registered.

A further distinction could be made between those registered in the VIS but who have not obtained any visa in the 12 months prior to their application and those that have obtained and lawfully used two visas during that period. The latter could be defined as ‘regular travellers’

and should enjoy maximum facilitations in terms of supporting documents required and period of validity of the MEV to be issued.

On this basis mandatory rules should be introduced providing specific procedural facilitations for ‘regular travellers’. Such facilitations would include (partial) waiving of requirements for supporting documents and the issuing of MEVs with a long period of validity. In concrete terms, the applicant who has obtained and lawfully used two visas in the preceding 12 months should only have to submit supporting documents proving the travel purpose and should receive a MEV valid for three years. Applicants who previously obtained and lawfully used such a three-year MEV should, for their next application, receive a MEV with a validity of five years.

First-time applicants, on the other hand, while benefiting from the general facilitations, would still need thorough screening, as they would enjoy significant facilitations if they apply again. This screening is necessary to preserve the security of the system.

The Commission proposes mandatory rules, on the basis of clearly defined and objective criteria, to enable a clear distinction to be made between categories of applicants. The principle should be that applicants with a positive ‘visa history’ registered in the VIS during the 12 months prior to their application, should enjoy maximum facilitations in terms of supporting documents to be submitted and the multiple entry visa to be issued.

To ensure the proposals on MEVs with a long period of validity (three and five years) have the maximum impact, consulates should be allowed to issue a MEV with a validity going beyond the validity of the applicant’s **travel document** (2.1.1.2, paragraph (11) CSWD).

The Commission proposes that rules be introduced enabling the issuing of a visa with a period of validity longer than the period of validity of the travel document to which the visa sticker is affixed.

The Visa Code introduced **mandatory and optional visa fee waivers** (2.1.1.3, paragraph (15) CSWD) for certain categories of applicants. The implementation of the relevant provisions has revealed two problems. First, the categories of persons eligible for a waiver of either type are not in all cases clearly defined and, secondly, consulates in a given location rarely apply optional fee waivers consistently. The result is that few potentially eligible applicants actually benefit from a waiver.

The Commission proposes that all visa fee waivers become mandatory and that the categories to which they apply be more clearly defined.

Visas can only be issued at the external borders (2.1.1.8, paragraph (35) CSWD) in exceptional cases. However, people working in the shipping and cruise industries are often obliged to apply for a visa at the border, due to the nature of their profession. For these seafarers, a specific Article and Annex were included in the Visa Code. Despite these rules, visa issuing to seafarers remains a complicated procedure, not least because of the complexity of Annex IX, which establishes the form that seafarers have to fill in to apply for a visa.

The Commission proposes that Annex IX be reviewed with a view to simplifying the

application form.

As stated above, visas can only be issued at external borders in exceptional cases. The Commission nevertheless recently endorsed a pilot project from a Member State allowing it to issue single-entry visas at its external borders to tourists during the summer season, to enable them to make a short visit. In view of the enhanced role of the common visa policy in facilitating travel opportunities for legitimate travellers, including tourists, to spur growth in the EU, the Commission proposes to open up this possibility to all Member States.

The Commission proposes to introduce a provision in the Visa Code allowing single-entry visas to be issued at external borders in order to promote short-term tourism.

While the Commission recognises that a Member State should be able to impose **airport transit visas** (2.1.7 CSWD) when confronted with a sudden and substantial influx of irregular migrants, the current rules should be reviewed to ensure that such measures are proportional in terms of scope and duration.

The Commission proposes that the current rules on airport transit visas be reviewed, with a view to ensuring proportionality.

The Visa Code applies to visa applications lodged by all third-country nationals, including family members of Union citizens (2.1.5., paragraphs (47) — (52) CSWD). In order to ease mobility, in particular by facilitating family visits, for third-country nationals visiting close relatives who are Union citizens residing in the territory of the Member State of which they are nationals and for close relatives of Union citizens residing in a third country and wishing to visit together the Member State of which the Union citizen has the nationality, procedural facilitations should be provided. Union law currently does not provide specific facilitations for these two situations. However, the recently concluded Visa Facilitation Agreements provide certain procedural facilitations to them (e.g. simplification of the requirements regarding supporting documents, visa fee waiver, mandatory issuing of MEVs). This practice should be made general in the Visa Code.

Article 5(2) of Directive 2004/38/EC¹⁶ provides particular facilitations to the beneficiaries of that Directive, such as issuing the visa “*free of charge*” and “*on the basis of an accelerated procedure*”. The Commission receives many complaints and requests for clarification on the relationship between Directive 2004/38/EC and the Visa Code, as facilitations provided to family members of Union citizens on the basis of the Directive are apparently implemented differently in different Member States. This state of affairs creates uncertainty for family members. Therefore, the same facilitations proposed for third-country nationals in the above mentioned two situations should as a minimum be granted to family members in situations covered by Directive 2004/38/EC as well.

The Commission proposes that visa facilitations be provided for third-country nationals

¹⁶ Directive 2004/38 of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, page 27).

visiting close relatives who are Union citizens residing in the territory of the Member State of which they are nationals and for close relatives of Union citizens residing in a third country and wishing to visit together the Member State of which the Union citizen has the nationality.

The same facilitations should as a minimum apply to family members of EU citizens benefiting from Directive 2004/38/EC.

3.3.4. Improving consular organisation and cooperation (also in view of the roll out of the VIS)

The Visa Code has established a legal framework for different forms of **consular cooperation** (2.1.4., paragraphs (40) — (46) CSWD) to reduce costs for Member States and to ensure better consular coverage for the benefit of applicants. There are, however, serious doubts about the effectiveness and efficiency of these provisions.

First, in principle, Member States should only decide to cooperate with an external service provider (ESP) after having assessed other possibilities of cooperation. It should be a ‘last resort’ measure, as it entails extra costs for the applicants and Member States should maintain the possibility for all applicants to lodge applications directly at their diplomatic missions or consular posts. In practice, however, Member States are in most cases opting for cooperation with an ESP without assessing other possibilities, as outsourcing is by far the cheapest, quickest and most efficient way of dealing with a big increase in the number of visa applications and enhancing consular coverage. Moreover, very often in case of outsourcing, direct access to the consulate is not provided.

Secondly, the new forms of cooperation defined in the Visa Code, i.e. limited representation (for the collection of applications, including biometric data, only), co-location, common application centres (CAC) and authorisation of honorary consuls to collect applications, have not been used widely. There are no cases of limited representation and co-location and only hybrid forms of CACs, while few Member States have authorised honorary consuls to collect applications.

Thirdly, as far as visa collecting and processing presence (so-called ‘consular coverage’) is concerned, while there has been progress, mostly by concluding representation arrangements and outsourcing, consular cover still needs to be increased considerably. Applicants should not have to travel abroad to lodge their application because the competent Member State does not have a consulate or is not represented in their country of residence.

Access to a consulate can also be challenging, costly and time-consuming in third countries where all or most Member States are present in the capital, but many applicants still need to travel a long distance to reach them. This is the case in China, India and Russia, for instance. Both representation arrangements and outsourcing are already widespread, but visa collection and processing is concentrated in the capitals and a few big cities. Finally, in nine third countries whose nationals are subject to the visa requirement, no Member State is present and there is no external service provider. These countries would be ideal places for Member States to pool resources and establish common application centres or any feasible form of cooperation.

In this respect, it should be noted that the external borders and visa component of the Internal Security Fund (ISF)¹⁷ will co-finance actions related to infrastructure, buildings and operating equipment (including the maintenance of the VIS) required for processing of visa applications and for training. More importantly, under the operating support element of the ISF, staffing of consulates will be eligible for full financing.

The Commission proposes that the existing definitions of consular cooperation be reviewed with a view to making them more flexible and that the principle of mandatory representation be introduced.

4. CONCLUSIONS

The overarching objective of the Visa Code was to ensure that the common visa policy would become truly common and applied in the same manner by all Member States in all locations, by means of one set of legal provisions and one set of operational instructions. Additionally, the common rules should contribute to facilitating legitimate travel, particularly for frequent and regular travellers, and for tackling irregular immigration. This evaluation has highlighted a number of benefits, but also areas for improvement regarding the procedures and conditions for issuing visas.

Although the facilitation of legitimate travel *ipso facto* brings economic benefits, the objective of providing visa facilitations to boost economic growth and job creation had not been assigned to the Visa Code. It was only introduced in the Commission Communication of November 2012 against the background of the need to ensure consistency among all EU policies and the current economic outlook. This report has therefore evaluated the extent to which the initial overall goal of facilitating legitimate travel and ensuring equal treatment in similar cases has been achieved, without specifically assessing its effectiveness in terms of contributing to economic growth.

Generally, compared to the situation before its adoption, the Visa Code clarifies and simplifies the legal framework for the common visa policy. The Code has to a considerable extent modernised and standardised visa procedures and, if correctly implemented, allows to address certain problems highlighted in the evaluation. However, the implementation of the legal provisions has not been optimal. This can largely be explained by the fact that most elements of flexibility are formulated as options ('may'-clauses) rather than mandatory rules.

The provisions of the Visa Code that aimed to preserve the security of external borders have proved to be consistent and effective and are still central to the purpose of the system. But the provisions intended to offer procedural facilitations to specific categories of persons, and which could also ease the administrative burden for Member States' consulates, have not had the expected impact. The result is unsatisfactory, not just for legitimate travellers, but also for the Member States and the EU as a whole, in terms of missed economic benefits.

The Visa Code applies universally and its provisions apply to all persons who are nationals of countries subject to the visa requirement. Therefore it is essential to adapt certain provisions to match local circumstances. But the legal framework has never really been embraced at

¹⁷ COM(2011)750.

local level, and only in a very few locations has sustainable and continued cooperation been introduced, whereas in others, certain legal obligations have sometimes simply been ignored.

To work towards a truly common visa policy, the Commission proposes a revision of Regulation (EC) No 810/2009 of the European Parliament and of the Council establishing a Community Code on Visas (Visa Code). The findings of the evaluation have fed into an impact assessment report drawn up by the Commission.

The Commission’s proposal for revising the Visa Code essentially builds on the following findings:

- The provisions of the Visa Code are applied to all applicants in the same manner, regardless of their individual situation, even though the Visa Code provides a legal basis to apply procedural facilitations to applicants known to consulates. In practice, consulates do not sufficiently distinguish between unknown applicants and those who have a positive visa record.
- Procedural facilitations envisaged by the Visa Code for known applicants are provided too rarely.
- Due to the extensive use of outsourcing, the possibility of waiving the requirement of appearing in person to lodge the visa application and exempting applicants from having to provide certain supporting documents simply cannot be put in practice. Making an assessment of the applicant’s situation against inherently discretionary notions such as ‘integrity’ and ‘reliability’ cannot be left to external service providers. This lack of differentiation is one of the main reasons why applicants — and to a certain extent consulates, too — find the existing visa procedure lengthy, cumbersome and costly.

Therefore, the Commission proposes:

- (1) **To ease the administrative burden for both applicants and consulates by fully exploiting the benefits of the Visa Information System and differentiating the treatment of known/regular travellers and unknown applicants on the basis of clear, objective criteria;**
- (2) **To further facilitate legitimate travel by streamlining and fully harmonising procedures and by rendering certain provisions mandatory where discretion is currently left to consulates.**

If adopted, these new rules will offer applicants significant procedural facilitations, as follows:

	<i>Lodging in person</i>	<i>Collection of fingerprints</i>	<i>Supporting documents</i>	<i>Visa to be issued</i>
<i>First time applicant, not VIS registered</i>	YES	YES	Full list corresponding to all entry conditions	In principle single but MEV also possible if the consulate

				considers applicant reliable
<i>VIS registered (but not regular traveller)</i>	NO	NO (unless fingerprints have not been collected within last 59 months)	Full list corresponding to all entry conditions	Single or MEV
<i>VIS registered regular traveller having lawfully used 2 visas in the 12 months prior to the application</i>	NO	NO	Only proof of travel purpose. Presumption because of 'positive visa history' of fulfilment of entry conditions	3-year MEV
<i>VIS registered regular traveller having lawfully used 3-year MEV</i>	NO	NO	Only proof of travel purpose	5-year MEV

First-time applicants should not automatically be eligible for a MEV as their applications need to be thoroughly examined to maintain a high level of security in the Schengen area. But they will benefit from all the general procedural facilitations that the Commission proposes, e.g. abolishing travel medical insurance, shorter deadlines for decision-making and a simplified application form. And they will benefit from 'VIS registered regular traveller' status, with accompanying facilitations, if they apply for a third visa within 12 months of their lawfully used first visa.

The lack of visa collecting and processing presence in many third countries makes the lodging of a visa application very costly and time consuming. Therefore, the Commission proposes:

(3) To revise the existing framework to boost consular cooperation and ensure easier access to Schengen visa application procedures in as many places as possible.

In keeping with the objective of spurring economic growth through a smarter visa policy, the possibility of using certain provisions in the Visa Code on a temporary basis, with a view to promoting short-term tourism, should be established. Therefore, the Commission proposes:

(4) To introduce an article in the Visa Code allowing visas to be issued at external borders on a temporary basis under strict conditions.

With a view to easing the mobility of persons by facilitating family visits it is proposed:

(5) To provide certain procedural facilitations to third-country nationals visiting close relatives who are Union citizens residing in the territory of the Member State of which they are nationals and to close relatives of Union citizens residing in a third country and wishing to visit together the Member State of which the Union citizen has the nationality.

With a view to clarifying in relation to the Visa Code the procedural facilitations that apply to family members of Union citizens under Directive 2004/38/EC¹⁸, it is proposed:

(6) To establish that the procedural facilitations referred to under (5) should as a minimum apply to the family members of Union citizens to whom Directive 2004/38/EC applies.

Finally, third-country nationals face problems as authorised stays in the Schengen area are limited to 90 days in any 180-day period. Because of the lack of appropriate authorisation for stays longer than 90 days, they either have to limit their stays or they look to make use of legal instruments that are not designed for ‘extending’ their authorised stay in the Schengen area in such cases. Therefore:

(7) A legislative initiative is proposed to close the legal gap between the rules on short stays and the rules on admission of third-country nationals to individual Member States.

The proposal revising the Visa Code also takes account of other problems highlighted in the Commission Staff Working Document that are of minor importance and/or mainly of a technical nature.

If adopted, this comprehensive revision of the Visa Code would establish a truly smarter common visa policy, which in turn would result in a rise in the number of visits to the EU.

Pending the adoption by the co-legislators of the proposal revising the Visa Code, the Commission considers it important and necessary to foster harmonisation and implementation of current provisions. The Commission will therefore work with the Member States, in the framework of the Visa Committee and other relevant fora, with a view to ensuring full implementation of the current provisions and by promoting identified best practices.

As regards current provisions, the focus will be on issuing MEVs and speeding up the harmonisation of the lists of supporting documents in jurisdictions where this has not yet been done. As regards the latter, the Commission will endeavour to assist LSC in its work in the jurisdictions of high political and/or economic importance and which offer the best tourism potential. In terms of best practices, new pilot project proposals for issuing visas at external borders can be assessed by the Commission. Finally, for future revisions of the Annexes of Regulation 539/2001, economic and trade considerations will also be taken into account, in line with the new criteria for assessing visa waivers that the co-legislators will shortly adopt; a new Article will be inserted in Regulation 539/2001 as follows: *“The purpose of this Regulation is to determine those third countries whose nationals are subject to or exempt from the visa requirement, based on a case-by-case assessment of a variety of criteria*

¹⁸ OJ L 158, 30.04.2004, p. 77

relating, inter alia, to illegal immigration, public policy and security, the economic benefits, in particular in terms of tourism and foreign trade, and the Union's external relations with relevant third countries including, in particular, human rights and fundamental freedoms considerations, as well as the implications of regional coherence and reciprocity."
