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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a touring visa and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 562/2006 and (EC) No 767/2008

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

In the framework of Schengen intergovernmental cooperation, detailed rules were established concerning the entry and stay of third-country nationals for up to three months in a six-month period (so-called short stays)[1]. This was done with the aim of ensuring the security of the Schengen area[2] and providing a right to move freely within it, including for third-country nationals. These rules were then further developed and consolidated in the framework of the European Union, following the entry into force of the Treaty of Amsterdam. For the purpose of this proposal, the core elements of the legislation in force are the following:

– Regulation (EC) No 562/2006 (Schengen Borders Code) and its subsequent amendments[3], among others, lay down the entry conditions for third-country nationals for short stays;

– Regulation (EC) No 539/2001 (Visa Regulation) and its subsequent amendments[4] list the third countries whose nationals must be in possession of a visa when crossing the external borders for short stays, and list countries whose nationals are exempt from that requirement;

– Regulation (EC) No 810/2009 (Visa Code) and its subsequent amendments[5] establish harmonised procedures and conditions for processing short-stay visa applications and issuing visas;

– The Convention implementing the Schengen Agreement[6] (CISA), and its amendments lay down the principle of 'mutual recognition' of short-stay visas. They also provide the right of free movement for up to 90 days in any 180-day period for third-country nationals who hold a valid residence permit or valid national long-stay visa issued by one of the Member States[7].

It is of course also possible for third-country nationals to stay longer than three months or 90 days in the Schengen area, but this should not be done on the basis of the existing provisions on short stays. It would require taking up residence in one of the Member States, so third-country nationals should apply for a residence permit or long-stay visa from the Member State concerned. Such permits are purpose-bound, issued for the purpose of work, business, study, family reunification, etc., but in principle, not for tourism. There are no general, horizontal EU-level rules establishing the conditions for issuing residence permits or long-stay visas, but there are sectorial directives covering specific categories of third-country nationals, e.g.

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1 It is to be noted that until 18 October 2013, the relevant provisions of the Schengen *acquis* referred to '3 months in 6 months from the date of first entry'. Regulation (EU) No 610/2013 (OJ L, 182, 29.6.2013, p. 1) re-defined the notion of 'short-stay' (i.e. the temporal scope of the Schengen *acquis*) and refers to '90 days in any 180-day period.'

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

3 The consolidated version is available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2006R0562:20100405:EN:PDF.

4 The consolidated version is available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2001R0539:20110111:EN:PDF.

5 The consolidated version is available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2009R0810:20120320:EN:PDF.

6 OJ L 239, 22.9.2000, p. 19.

7 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, Cyprus, Ireland, Romania and the United Kingdom), as well as the Schengen associated members (Iceland, Liechtenstein, Norway and Switzerland).

workers or students. However, these Directives do not provide for full harmonisation and leave Member States room for manoeuvre to provide for exceptions and derogations and to specify certain details in their national laws.

The 90 day/180 day 'limitation' in the Schengen *acquis* is not unique in aliens' law. National legislation on foreigners traditionally distinguishes between entries for short stays (one, three, six months) – 'visitors' – particularly for tourism and with less stringent conditions attached, and the admission of third-country nationals who wish to reside longer for work, studies, etc. where stricter conditions apply. In any case, irrespective of the dividing line between short visits and residence and the conditions imposed on foreigners, national legislation provides appropriate authorisations for entry, stays and residence, whatever the length of the envisaged stay on a Member State's territory (visas with different lengths of validity, extension of visas, temporary residence permits, permanent residence permits, etc.).

The current Schengen and the EU migration *acquis*, however, do not provide a system covering all kinds of envisaged stay comparable to such national legislation. For legal and political reasons, as described above, the Schengen *acquis* covers short stays in the territory of all Member States, while EU legal instruments developed in the area of immigration/admission policy set up the framework for national legislation in view of admitting third-country nationals for stays of more than three months on their *own* territory.

The Schengen area has expanded to 26 countries and many third-country nationals, such as tourists, live performance artists, researchers, students, etc., have legitimate reasons for travelling within this area for more than 90 days in a given 180-day period without being considered as 'immigrants'. They do not want and/or do not need to reside in a particular Member State for longer than three months. However, *there is no 'Schengen' visa or other authorisation allowing for a stay of more than three months or 90 days in the Schengen area.*

Over the years, the Commission has received many complaints and requests for solutions regarding this problem from third-country nationals, both those who require visas and those who are visa exempt. The 90 day/180 day 'limitation' may have been appropriate for the size of the five founding members of the Schengen cooperation. However, when the Schengen area comprises 26 Member States, it poses a considerable barrier for many third-country nationals with legitimate interests in travelling in the Member States. It also leads to missed economic opportunities for Member States.

The main characteristic of the travellers reporting problems is that they intend to 'tour around' Europe/the Member States. They wish to stay longer than 90 days (in any 180 days) in the Schengen area. So, if they are nationals of third countries who require visas, they cannot apply for a short-stay, 'Schengen' visa, since these are only issued for trips of a maximum of 90 consecutive days. Visa-free third-country nationals, as a rule, are not entitled to do so either. But neither category of third-country nationals intends to stay for more than 90 days in any Member State, so they cannot obtain a 'national' long-stay visa[8], or residence permit.

This legislative gap between the Schengen *acquis* and the EU and national immigration rules means that such travellers should, in principle, leave the Schengen area on the last day of their consecutive 90-day stay and 'wait' for 90 days outside the Member States before they can return for another legal stay. This situation cannot be justified by Member States' security concerns and does not serve their economic, cultural and educational interests.

In particular, associations and interest groups of live performing artists emphasise that they often have difficulties in organising tours in Europe due to the 90 day/180 day 'limitation' of

[8] Cf. Article 19 of the CISA, reference in footnote 6.

stay. Touring companies generally do not meet the residency requirements enabling artists, staff and their family members to obtain long-stay visas or residence permits. As the staff of such companies are often highly specialised and trained, it is not usually possible to replace them, or it would be costly or highly disruptive to do so. According to examples provided by the European Circus Association (ECA) the loss of revenue per engagement (i.e. per city where a well-known group performs) was about EUR 380 000 in one example and EUR 920 000 in another (local employment for ushers, concession, cleaning teams, site rental, taxes and fees, local suppliers, printers, marketing, services, hotels and restaurants, local transport services, wages and salaries paid in each city). The ECA also reported cases in which a company had to substitute/rotate cast and crew to comply with the 'limitation' of stay. In one case, replacing 36 staff members cost the company about EUR 110 000. According to the Performing Arts Employers Associations League Europe (Pearle*), the lack of an 'alternative' authorisation costs the EU between EUR 500 million and 1 billion per annum which is significant in the current financial and economic context.

Travel agencies, as well as numerous queries addressed to the Commission, suggest that more and more 'individual' travellers (students, researchers, artists and culture professionals, pensioners, business people, service providers, etc.) also have a strong interest in being allowed to circulate for longer than 90 days in any 180-day period within the Schengen area.

In addition, there are many third-country nationals already residing in the Schengen area with a long-stay visa or residence permit issued by a Member State who need or want to travel to other Member States during or after their stay. For instance, third-country national students may like to travel within the Schengen area after finishing their studies for, say, six months before returning home. According to Article 21 of the CISA, such persons, in principle, have the right to move freely in the Member States on the basis of their valid long-stay visa or residence permit, but the 90 day/180 day 'limitation' also applies to them.

The general rule does not pose any problem for the vast majority of travellers and should be kept. But as long ago as 2001, the Commission recognised the need to complement it by introducing an authorisation for stays of longer than three months in the Schengen area. It proposed a Council Directive on conditions under which third-country nationals would have the freedom to travel within the territory of the Member States for periods not exceeding three months, introducing a specific travel authorisation and determining the conditions of entry and movement for periods not exceeding six months[9].

The Commission proposed to introduce a *specific travel authorisation* for third-country nationals planning to travel in the territory of the Member States for a period of *no more than six months in any given period of 12 months*. The authorisation would have allowed a consecutive 6-month stay within the Schengen area, but recipients would not have stayed for more than three months in any single Member State. This proposal — which covered several other issues, e.g. expulsion — was formally withdrawn by the Commission in March 2006. The main concerns of Member States at that time were the legal basis and the anticipated bureaucracy related to the envisaged permit. Some of them disagreed with the plan to introduce the permit for third-country nationals requiring a visa for a short stay as they considered that it might affect the integrity of the short-stay visa regime.

The legislative gap discussed above forces Member States to bend the rules and make use of legal instruments not designed for 'extending' an authorised stay in the Schengen area:

[9] COM(2001) 388 final. OJ C 270, 25.9.2001, p. 244.

application of Article 20(2)[10] of the CISA or issuing limited territorial validity visas (LTV visas) under Article 25(1)(b) of the Visa Code[11]. These practices are described in detail in Annex 7 of the Impact Assessment[12] accompanying the simultaneously presented Proposal for a Regulation of the European Parliament and of the Council on the Union Code on Visas (Visa Code)(recast)[13].

It is therefore desirable to introduce a new type of visa both for visa-exempt and visa-requiring third-country nationals with a legitimate interest in travelling around the Schengen area for more than 90 days in any 180-day period.

The objective of the proposal is to fill the legislative gap between the Schengen *acquis* on short stays and the EU/national law on residence in a particular Member State by:

– establishing a new type of visa ('touring visa') for an intended stay in two or more Member States lasting more than 90 days but no more than 1 year (with the possibility of extension up to 2 years), provided that the applicant does not intend to stay for more than 90 days in any 180-day period in the same Member State, and

– determining the application procedures and the issuing conditions for touring visas.

The proposal regulates neither the conditions and procedures on admitting third-country nationals for stays longer than three months in a Member State, nor the conditions and procedures for issuing work permits or equivalent authorisations (i.e. access to the labour market).

Though the proposal provides that many provisions of the Visa Code should apply to processing the new type of visa, a separate proposal is justified, rather than integrating the provisions into the proposal for amending the Visa Code, as the scope of the latter are the rules and procedures for issuing visas to third-country nationals who require visas (cf. Annex I to Regulation (EC) No 539/2001).

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

- **Consultation of interested parties**

This is described in the Impact Assessment (IA) referred to in section 1. In general, interest groups — in particular artists' associations — confirm that the gap in the current legal framework is a serious impediment to mobility, be it professional or leisure and welcome the introduction of a new type of visa. The majority of the Member States, however, seems to be sceptical as to the need to act in view of the limited group of applicants it would concern. Some of the Member States raised concerns regarding the legal basis (cf. section 3).

- **Impact assessment**

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10 'Aliens not subject to a visa requirement may move freely within the territories of the Contracting Parties for a maximum period of 90 days in any 180-day period, […]. Paragraph 1 shall not affect each Contracting Party's right to extend beyond 90 days an alien's stay in its territory in exceptional circumstances or in accordance with a bilateral agreement concluded before the entry into force of this Convention.'

11 'A visa with limited territorial validity shall be issued exceptionally, in the following cases: […] (b) when for reasons deemed justified by the consulate, a new visa is issued for a stay during the same 180-day period to an applicant who, over this 180-day period, has already used a uniform visa or a visa with limited territorial validity allowing for a stay of 90 days.'

12 SWD(2014) 68.

13 COM(2014) 164.

The assessment of the impact of introducing an authorisation allowing third-country nationals to stay more than 90 days in any 180-day period in the Schengen area is included in the IA accompanying the proposal amending the Visa Code.

The IA considered two regulatory options.

One of the options, *a new type of authorisation* with a view to an intended stay in the Schengen area lasting more than 90 days but no more than 360 days was envisaged 'only' *for a limited group of third-country nationals*: artists (or sportsmen), culture professionals and their crew members employed by reliable and acknowledged live performing companies or organisations and core family members travelling with them. Limiting the beneficiaries to this group was based on the fact that they seem to be the main group of third-country nationals affected by the current legislative gap.

Another policy option envisaged a similar authorisation not just for that specific category of third-country nationals, but *for all third-country nationals* (i.e. 'individual' travellers, e.g. tourists, researchers, students, business people). Since the problem is due to a legislative gap between the Schengen *acquis* on short stays in the Schengen area and the legislation on admission of third-country nationals for stays longer than 90 days on the territory of a Member State, a *non-regulatory policy option was not developed.*

The IA showed[14] that the *lack of an authorisation* allowing travellers to stay more than 90 days in any 180-day period in the Schengen area *results in a considerable economic loss to the EU*. According to the study supporting the IA, the number of potential beneficiaries of the new authorisation is rather limited. Implementation of the first option might concern approximately 60000 applicants, while the second option might double the number of potential applicants. These are rather small numbers, bearing in mind that there were more than 15 million 'Schengen' visa applications in 2012 and the number of applications is rising steadily.

However, these travellers are considered to be 'big spenders' and therefore likely to generate considerable revenue and to boost economic activity in the EU, not least because they stay longer in the Schengen area. The first option could lead to an estimated EUR 500 million in additional income to the Schengen area per year. The economic impact of the other option is estimated at around EUR 1 billion. In both options, the economic gain would be due to the spending of 'new' travellers attracted by a new opportunity to stay longer in the Schengen area without using cumbersome 'alternatives' on the borderlines of legality, such as obtaining LTV visas.

The IA also showed that the administrative cost of processing the new type of authorisation would not be significant, given the limited number of applications expected and the fee to be charged. For third-country nationals today, making applications for new visas or for extensions already implies costs. Regarding the second option, the IA pointed out a specific risk: some holders of the new authorisation might seek employment on the black market.

3. LEGAL ELEMENTS OF THE PROPOSAL

• Detailed explanation of the proposal

The objective of the proposal is to fill a legislative gap. Therefore, Article 1 of the proposal establishes a new type of visa, called 'touring visa' (T-type visa). This Article also makes

[14] The IA also notes that it is very difficult to assess economic and financial impacts in this area due to the lack of data and solid methodology for estimations, so the numbers referred to in this paragraph shall be dealt with with caution.

clear that the Regulation does not affect the admission/immigration *acquis.* This implies, for instance, that the Regulation does not affect Member States' legislation on the impact of 'absence' of residing third-country nationals on their residence permits while they travel in other Member States on the basis of a touring visa. Third-country nationals who exercise (intra-EU) mobility under EU rules are not covered by the Regulation either.

Article 2 sets a fundamental principle by making a cross reference to the provisions of the Visa Code and Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)[15]. The touring visa is quite distinct in many ways from the short-stay visa as defined in Article 2 of the Visa Code. However, it is very similar to a uniform visa as in principle, it is valid for the territory of all Member States. The new type of visa is established on the legal basis of short-stay visas and permits, namely Article 77 of the TFEU. Therefore it is justified in principle to apply the relevant provisions of the Visa Code to the touring visa. The subsequent provisions (Articles 4 to 9) specify in detail which provisions of the Visa Code will be applicable as regards the conditions and procedures for issuing touring visas, and lay down the derogations from and additions to these rules, taking into account the specificities of the new type of visa. For that purpose, the subsequent articles follow the structure of the Visa Code, taking chapter by chapter and confirming for every single provision whether it applies and whether there are any additions or derogations. Since the Commission is simultaneously proposing a recast of the Visa Code[16], this proposal will refer to the provisions of the proposed recast regulation rather than the existing regulation[17]. The VIS Regulation, as amended by this proposal, will fully apply to the touring visa without any need for additions or derogations.

Article 3 provides that certain definitions contained in the Visa Code (e.g. 'third-country national', 'visa sticker', 'application', 'consulate') are also applicable to this proposal. In addition it defines the 'touring visa' as an authorisation issued by a Member State with a view to an intended stay in two or more Member States for a total of more than 90 days in any 180-day period, provided that the applicant does not intend to stay for more than 90 days in any 180-day period[18] in the same Member State. With this latter 'limitation', admissions for stays longer than three months in *one* Member State are excluded.

Article 4 sets out the provisions in the Visa Code on the authorities taking part in the procedures relating to applications which should apply to the touring visa. It excludes the possibility of applications for touring visas to be lodged at the external borders, as authorising a stay of possibly up to two years in the Schengen area requires thorough scrutiny that can

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15 OJ L 218, 13.8.2008, p. 60.

16 COM(2014) 164.

17 Amendments to the Visa Code recast proposal during the legislative process will therefore also have to be reflected in this proposal.

18 As mentioned earlier, third-country nationals, being visa required or not, under the short-stay regime can stay up to 90 days in any 180-day period in the Schengen area, which can also mean a stay solely in one Member State. Depending on the entries and exits, it means that in a 1-year period the maximum length of legal stay is 180 days (2 x 90 days). Due to the fact that touring visas could be issued for up to 1 year (360 days), the reference to the '180-day period' is necessary to ensure that holders of touring visas would not get less in terms of length of authorised stays in a same Member State than visa-free third-country nationals or holders of a multiple entry short-stay visa issued with a validity of 2 years or more. Absence of reference to the '180-day period', for example, would mean that while a Russian citizen with a multiple entry short-stay visa valid for 1 year, can, in principle stay for (a non-consecutive) 180 days in the same Member State within the 1 year validity of the visa, a holder of a 1 year valid touring visa could only stay for 90 days in the same Member State within the validity of his touring visa.

never be carried out at external borders. This Article also derogates from Article 5 of the Visa Code by stating that the Member State competent to examine and decide on an application for a touring visa should be the Member State whose external border the applicant intends to cross to enter the territory of the Member States. This is justified by the fact that for many third-country nationals who wish to tour the Schengen area for longer than 90 days, the provisions of the current Visa Code (main destination in terms of purpose or length of stay) would hardly be applicable. The purpose of the visit is, in principle, the same in all Member States (e.g. live performance or tourism), while in many cases, applicants may not know in advance the length of their stays in different Member States. Finally, Article 4 entitles certain categories of third-country nationals to lodge the touring visa application in the territory of the Member State where they are legally present. This is justified, as many third-country nationals residing in the territory of the Member States, as well as third-country nationals exempt from the obligation to be in a possession of a visa for stays of up to 90 days (short stays), have sufficient financial means and a legitimate interest in circulating in other Member States for longer than 90 days in a given 180-day period while residing/staying in a specific Member State (or immediately after such residence). It is neither in the security interests nor in the economic interests of the Union to require these persons to leave the Schengen area to apply for a touring visa in their country of origin.

Article 5 specifies the provisions in the Visa Code that are applicable to the application process for a touring visa and lays down additional provisions and exceptions. It requires the applicant to present a valid travel document recognised by the Member State competent to examine and decide on an application and at least one other Member State to be visited. An additional condition for applicants is to present appropriate proof that they intend to stay in the territory of two or more Member States for longer than 90 days in total without staying for more than 90 days in any 180-day period in the territory of any one of these Member States. The Article does not provide derogations from the Visa Code regarding the visa fee which will therefore be EUR 60, (i.e. the standard visa fee for an application for a short-stay visa). This is justified as the tasks of the consulates, irrespective of whether they process short-stay or touring visa applications, are basically the same. The provisions of the Visa Code regarding the reduction and waiver of the visa fee should also apply. Similarly, the provisions of the Visa Code shall apply regarding the service fee that can be charged by external service providers and which must not exceed half the EUR 60 visa fee.

Another important criterion set out in this Article is that applicants will have to demonstrate their sufficient means of subsistence and stable economic situation by means of salary slips or bank statements covering a period of 12 months prior to the date of the application, and/or supporting documents that demonstrate they will acquire sufficient financial means lawfully during their stay (e.g. proof of entitlement to a pension). According to this Article, applicants in possession of a touring visa shall be allowed to apply in the Member State where they are legally present for work permit(s) required in the subsequent Member States. This provision does not interfere with provisions related to access to the labour market, and does not regulate whether a work permit is required; nor does it affect issuing conditions. It solely regulates the place of application, insofar as a third-country national should be allowed to apply for a work permit without leaving the Schengen area. The Article envisages certain procedural facilitations (i.e. possible waiver of submitting certain supporting documents) for specific categories of applicants who work for or are invited by a reliable and acknowledged company, organisation or institution, in particular, at managerial level or as researcher, artist, culture professionals, etc. Stakeholders rightly claim that for these categories of persons, the procedure should focus not only on the 'individual' applicant, but also on the reliable status of the sending/hosting/inviting company/organisation/institution.

Apart from the reference to the general provisions of the Visa Code on the examination of and decision on an application that shall be applicable to touring visas, the core provision in Article 6 is that particular attention should be paid to the applicant's financial status: sufficient financial means of subsistence for the overall duration of the intended stay, including sufficient means to cover accommodation. This Article also lays down a general 20 calendar day deadline for deciding on an application. This is more than the current processing time for applications for a short-stay visa and justified by the need for thorough scrutiny of the applicant's financial situation.

As it is necessary to clarify the interaction between stays on the basis of existing short-stay visas, long-stay visas and residence permits versus stays on the basis of touring visas to incorporate the new type of visa into the 'system', Article 6 allows for the combination of stays on the basis of touring visas with previous/future visa-free stays, stays on the basis of short-stay visas, long-stay visas or residence permits. Similar provisions will be introduced in the Visa Code and the Schengen Borders Code.

Article 7 deals with the issuing of the touring visa, where specified provisions of the Visa Code should also apply. The Article stipulates that the touring visa must always allow for multiple entries. As regards the length of the authorised stay — in conjunction with Article 8 — the Proposal provides the possibility of a stay of up to two consecutive years in the Schengen area for all third country nationals who can prove they fulfil the conditions for such a long period. When assessing an application, and in particular when defining the length of an authorised stay, consulates should take into account all relevant factors, e.g. the fact that citizens of third countries whose nationals are exempt from the visa requirement for short stays traditionally do not pose problems of irregular migration or security risks. The period of validity of the visa should correspond to the length of authorised stay. Due to the nature of the new visa, the Article excludes the possibility of issuing a touring visa with a validity limited to the territory of one Member State. A touring visa, by definition, is supposed to allow applicants to circulate in several Member States.

The touring visa is to be issued in the uniform format (visa sticker) laid down in Regulation (EC) No 1683/95, and shall bear the letter 'T' as an indication of its type. Article 77(2)(a) of the TFEU refers to both 'visas' and 'short-stay residence permits'. Given that residence permits are issued in a (plastic) card format in accordance with Regulation (EC) No 1030/2002 of 13 June 2002[19], and bearing in mind that most Member State consulates are not equipped to issue permits in card format, it would create an excessive burden for Member States to be required to issue the new authorisation in card format.

Article 8 concerns the modification of an issued visa, i.e. its extension, annulment and revocation. It provides the possibility of extending the length of authorised stay for a period of up to 2 years. Contrary to the provisions for extending a short-stay visa, applicants will not be required to justify 'exceptional' circumstances. In fact, many potential applicants for this type of visa (especially live performance artists) often need to stay for long periods in the Schengen area without setting up residence in any of the Member States. To apply for the extension of a touring visa, the applicant will have to prove they continue to fulfil the entry and visa issuing conditions and that the ongoing stay will comply with the requirement of not staying for more than 90 days in any 180-day period in one Member State.

Article 9 specifies the provisions in the Visa Code's chapter on 'Administrative management and organisation' that should also apply for the purpose of issuing touring visas. In the

[19] OJ L, 157, 15.6.2002, p. 1.

framework of local Schengen cooperation, consulates should exchange statistics and other information on touring visas.

Articles 10 to 16 are so-called final and/or operational articles, among others, dealing with the operational instructions on the processing of touring visas (in which further clarification will be provided as regards the relationship between the Visa Code provisions and the provisions set out in this Proposal), monitoring, entry into force, etc. The main objective of the amendments of the Schengen Borders Code and the VIS Regulation is to 'integrate' the touring visa into the Schengen *acquis*.

First and foremost, it means that the entry conditions set out in Article 5 of the Schengen Borders Code also apply as conditions for the issuing of a touring visa and, in addition, it must be ensured that touring visa applications/visas are registered in the VIS. It must be noted, however, that the proposal also concerns third-country nationals who are exempt from the short-stay visa requirement (cf. Annex II of the Visa Regulation and whose data are thus not registered in the VIS) since, in principle, travellers from these countries do not pose security and migratory risks for the Member States. Therefore, bearing in mind the principle of proportionality, collecting the fingerprints of nationals of such third countries (e.g. Australia, Canada, United States) is not justified. This exemption is provided in Article 5 and opens the way for Member States to accept the submission of touring visa applications electronically or by post from citizens of these third countries.

Article 12 requires further explanation. It partially repeals Article 20(2) of the CISA, according to which, if a Member State concluded a bilateral visa waiver agreement with a third country on the list in Annex II of the Visa Regulation ('visa-free list') before the entry into force of the CISA (or the date of the Member State's later accession to the Schengen Agreement), the provisions of that bilateral agreement may serve as a basis for that Member State to 'extend' a visa-free stay for longer than three months in its territory for nationals of the third country concerned.

Thus, for example, citizens of Canada, New Zealand or the United States can stay in such Member States for the period provided by the bilateral visa waiver agreement in force between the Member States and these three countries (usually three months), in addition to the general 90-day stay in the Schengen area. For these countries, the Commission is aware of several bilateral agreements, meaning their citizens can legally stay for a virtually unlimited period in the Schengen area on the basis of short-stay visa waivers. New Zealand, for instance, has 16 bilateral visa waiver agreements, so on top of the 90-day visa-free stay based on the Visa Regulation, its citizens can in practice remain in the territory of the Schengen area for 51 months (three months plus 48 months).

Already in 1998, Member States considered that such an unlimited stay was not compatible with the spirit of an area without frontiers. The Executive Committee adopted a Decision concerning the harmonisation of agreements on the removal of the visa requirement[20]. According to this Decision, Member States were to introduce standard clauses in their bilateral agreements limiting the duration of visa-free stays to three months per six months in the Schengen area (rather than in the territory of the Member State concerned).

After the incorporation of the Schengen *acquis* into the Community framework by the entry into force of the Treaty of Amsterdam, Article 20(2) of the CISA ran counter not only to the spirit of the frontier-free area, but also became incompatible with the Treaty: Article 62(3) of the Treaty establishing the European Community (TEC) referred to 'measures setting out the

[20] SCH/Com-ex (98) 24 of 23.6.1998.

conditions under which nationals of third countries shall have the freedom to travel within the territory of the Member States during a period of *no more than three months*'. Therefore, the Commission in its 2001 'right to travel' initiative proposed to repeal Article 20(2).

The Treaty on the Functioning of the European Union (TFEU) no longer limits the 'short stay' in the Schengen area to three months; it does not specify its duration. However, Article 20(2) and the existence of bilateral 'extensions of stays' is still incompatible with 77(2)(a) and (c) of the Treaty, because the common policy on visas cannot be based on the existence of bilateral agreements from the past. The scope of third-country nationals' freedom to travel should not depend on the number and content of bilateral agreements concluded in the past. The same rules should apply to all visa-free third-country nationals. The implementation of Article 20(2) raises practical problems and creates legal uncertainty both for authorities and travellers, especially when the latter are to depart from the Schengen area. In addition, the future Entry/Exit System requires clear-cut rules and for technical reasons, account cannot be taken of the possible continued application of bilateral visa waiver agreements when the period of authorised stay is to be verified. Finally, one of the ideas behind introducing the touring visa is to provide a legal framework and appropriate authorisation enabling visa-free third-country nationals to stay in the Schengen area for longer than 90 days.

The proposal provides for a five-year transitional period for Member States to 'phase out' the impact of their bilateral agreements as far as the overall length of stay of third-country nationals is concerned in the Schengen area. This takes time and it must be also acknowledged that certain third countries attach high importance to keeping the *status quo*.

From a political point of view, this is understandable. A visa waiver agreement is among those legal instruments which bring concrete and direct benefit for citizens on both sides. It must be made clear that partially deleting Article 20(2) does not imply that these agreements are immediately and fully becoming inapplicable. In addition, replacing the existing regime of extending short stays on the basis of old bilateral visa waiver agreements with a new type of visa for up to one year — with the possibility of extension up to two years — would not have a negative impact on many Americans, Canadians, New Zealanders, etc. in practice. Many of those who want to stay a year or more, are likely to work during that period and will therefore need to take up residence in one of the Member States and consequently apply for a long-stay visa or residence permit.

- **Link with the simultaneously tabled proposal for a Regulation recasting the Visa Code and other proposals**

Negotiations on the simultaneously tabled proposal for a Regulation recasting the Visa Code will have an impact on this proposal, so particular attention should be paid to ensuring the necessary synergies between these two proposals during the negotiation process. If in the course of these negotiations an adoption within a similar timeframe appears within reach, the Commission intends to merge the two proposals into one single recast proposal.

Similarly, at a later stage, synergies will have to be ensured with the Proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data of third-country nationals crossing the external borders of the Member States of the European Union[21]. Its subject matter and scope might require changes if

[21] COM(2013) 95 final, 28.2.2013.

it is decided to make use of the EES to control the entries and exits of touring visa holders at the external borders[22].

- **Legal basis**

Article 77 of the TFEU confers the power on the Union to act on 'short-stays' in the Schengen area. According to Article 77(2) of the TFEU:

'[…] the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning:

(a) the common policy on visas and other short-stay residence permits;

(b) the checks to which persons crossing external borders are subject;

(c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;'

This proposal contains measures concerning each of these three elements. Article 77(2)(a), (b) and (c) TFEU therefore appears to be the appropriate legal basis for the proposal.

Article 79 TFEU confers the power on the Union, in the framework of a common *immigration* policy, to legislate on long-stay visas and residence permits which both relate to legal *residence* in Member States, i.e. to *long-term* stays in a *single* Member State. The introductory paragraph (1) of Article 79 as well as paragraph (2)(b) explicitly refer to third-country nationals *residing* legally in Member States. The target group of this proposal neither want nor need to *reside* in any of the Member States; they rather wish to *travel around* Europe, i.e. to *circulate* within the Schengen area, before leaving it again. Article 79 TFEU is therefore not an appropriate legal basis for the proposal.

Article 62 TEC, which preceded Article 77 TFEU, in its third paragraph referred to *'measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the Member States during a period of no more than three months*'. Article 77(2)(c) TFEU no longer limits the *'short period'* to three months. This clear change in the Treaty took away an obstacle which there might have been under the previous treaties to adopting a similar proposal.

In conclusion, Article 77(2)(a), (b) and (c) of the TFEU is the appropriate legal basis for this proposal, which intends to regulate the circulation by third-country nationals in the Schengen area and from which situations falling under Article 79 TFEU (admission for long-term stays in the territory of a single Member State) are excluded. The latter element is ensured by the proposed definition according to which holders of the touring visa should not be allowed to stay for more than 90 days in any 180-day period in the territory of the same Member State.

- **Subsidiarity and proportionality principle**

[22] The proposal for a Decision of the European Parliament and of the Council introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Croatia and Cyprus of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period and repealing Decision No 895/2006/EC and Decision No 582/2008/EC of the European Parliament and the Council (COM(2013) 441 final, 21.6.2013) will surely be adopted well before the adoption of this Proposal. Once this new 'Transit Decision' is adopted, a new Article is to be added to this proposal with a view to integrating the touring visa into Article 2 of the future Decision. In the expectation that the new Decision will repeal Decision No 895/2006/EC and Decision No 582/2008/EC, this Proposal does not contain a provision amending the latter decisions.

Article 5(3) of the Treaty on European Union (TEU) states that, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objective of the proposed action cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. With regard to this proposal, the need for intervention at Union level is very clear. Any authorisation which would be valid in all Member States can only be introduced at EU level; the 'mutual recognition' of each other's touring visas cannot be set up at national level. The issuing conditions and procedures should be uniform for all Member States. This can only be attained through action at Union level.

Article 5(4) of the TEU states that action by the Union shall not go beyond what is necessary to achieve the objectives of the Treaty. The form chosen for this EU action must enable the proposal to achieve its objective and be implemented as effectively as possible. This proposal does not contain any elements which would not be directly related to the objectives. It is also proportional in terms of costs. The proposal therefore complies with the proportionality principle.

- **Choice of instrument**

This Proposal will establish a new type of visa which in principle shall be valid in all Member States and determine the conditions and procedures for issuing this visa. Therefore only a Regulation can be chosen as a legal instrument.

4. ADDITIONAL ELEMENTS

- **Participation**

This proposal builds on the Schengen *acquis* in that it concerns the further development of common policy on visas. Therefore, the following consequences in relation to the various protocols annexed to the treaties and agreements with associated countries have to be considered:

Denmark: In accordance with Articles 1 and 2 of the Protocol (no 22) on the position of Denmark, annexed to the TEU and TFEU, Denmark does not take part in the adoption by the Council of measures pursuant to Title V of part Three of the TFEU. Given that this Regulation builds upon the Schengen *acquis*, Denmark should, in accordance with Article 4 of that Protocol, decide within a period of 6 months after the Council has decided on this Regulation whether it will implement it in its national law.

United Kingdom and Ireland: In accordance with Articles 4 and 5 of the Protocol integrating the Schengen *acquis* into the framework of the European Union and Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland, and Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*, the United Kingdom and Ireland do not take part in implementation of the common visa policy and in particular, Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code). Therefore, the United Kingdom and Ireland do not take part in the adoption of this Regulation and are not bound by it or subject to its application.

Iceland and Norway: The procedures laid down in the Association Agreement concluded by the Council and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* are

applicable, since the present proposal builds on the Schengen *acquis* as defined in Annex A of this Agreement[23].

Switzerland: This Regulation constitutes a development of the provisions of the Schengen *acquis,* as provided for by the Agreement between the European Union, the European Community and the Swiss Confederation on the Confederation's association with the implementation, application and development of the Schengen *acquis*[24].

Liechtenstein: This Regulation constitutes a development of the provisions of the Schengen *acquis*, as provided for by the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[25].

Cyprus: This Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it, as provided for by Article 3(2) of the 2003 Act of Accession.

Bulgaria and Romania: This Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it, as provided for by Article 4(2) of the 2005 Act of Accession.

Croatia: This Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it, as provided for by Article 4(2) of the 2011 Act of Accession.

[23] OJ L, 176, 10.7.1999, p. 36.
[24] OJ L, 53, 27.2.2008, p. 52.
[25] OJ L 160, 18.6.2011, p. 19.

2014/0095 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a touring visa and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 562/2006 and (EC) No 767/2008

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission[26],

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

Having regard to the opinion of the European Economic and Social Committee[27],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Union legislation established harmonised rules concerning the entry and stay of third-country nationals in the Member States for up to 90 days in any 180-day period.

(2) Several sectorial Directives have been adopted regarding the conditions for admission of third-country nationals to the territory of the Member States for a period exceeding three months. Article 21 of the Convention Implementing the Schengen Agreement[28] grants third-country nationals who hold valid residence permits or national long-stay visas issued by one of the Member States the right of free movement within the territory of the other Member States for up to 90 days in any 180-day period.

(3) Visa-requiring and visa-exempt third-country nationals may have a legitimate interest in travelling within the Schengen area for more than 90 days in a given 180-day period without staying in any single Member State for more than 90 days. Rules should therefore be adopted to allow for this possibility.

(4) Live performance artists, in particular, often experience difficulties in organising tours in the Union. Students, researchers, culture professionals, pensioners, business people, service providers as well as tourists may also wish to stay longer than 90 days in any 180-day period in the Schengen area. The lack of appropriate authorisation leads to a loss of potential visitors and consequently to an economic loss.

(5) The Treaty distinguishes between, on the one hand, the conditions of entry to the Member States and the development of a common policy on short-stay visas, and on

[26] OJ C , , p. .

[27] OJ C , , p. .

[28] Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, OJ L 239, 22.9.2000, p. 19.

the other hand, the conditions of entry for the purpose of residing legally in a Member State and issuing long-stay visas and residence permits for that purpose. However, the Treaty does not define the notion of short stay.

(6) A new type of visa ('touring visa') should be established for both visa-exempt and visa-requiring third-country nationals planning to circulate in the territory of two or more Member States for more than 90 days, provided that they do not intend to stay for more than 90 days in any 180-day period in the territory of the same Member State. At the same time, the 90 days per 180 days rule should be maintained as a general dividing line between short stays and long stays, as it does not pose any problems for the vast majority of travellers.

(7) Where relevant, the provisions of Regulation (EU) No xxx/201x of the European Parliament and of the Council[29] and Regulation (EC) No 767/2008 of the European Parliament and of the Council[30] should apply to the application for and the issuing of touring visas. Given the different needs and conditions of third-country nationals applying for touring visas and due to economic and security considerations, specific rules should nevertheless be introduced, among others, as regards the authorities taking part in the procedures, the application phase, the examination of and decision on applications and the issuing and refusal of touring visas.

(8) Nationals of third countries listed in Annex II of Council Regulation (EC) No 539/2001[31] should benefit from certain facilitations, such as the exemption from the collection of fingerprints.

(9) The interaction between stays on the basis of short-stay visas, long-stay visas and residence permits and stays on the basis of touring visas should be clarified to ensure legal certainty. It should be possible to combine stays on the basis of touring visas with previous and future visa-free stays, stays on the basis of short-stay visas, long-stay visas or residence permits.

(10) It should be possible to extend the authorised stay, taking into consideration specific travel patterns and needs, provided that holders of a touring visa continue to fulfil the entry and visa issuing conditions and can prove that during their prolonged stay, they comply with the requirement of not staying for more than 90 days in any 180-day period in the territory of the same Member State

(11) The touring visa scheme should be integrated into the relevant legal instruments of the Schengen *acquis*. Therefore, amendments should be introduced to Regulation (EC) No 562/2006 of the European Parliament and of the Council[32] and to Regulation (EC) No 767/2008. The entry conditions set out in Article 5 of Regulation (EC) No 562/2006 should apply as visa issuing conditions. Touring visa applications and decisions on touring visas should be registered in the Visa Information System.

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29 Regulation (EU) No xxx/201x of the European Parliament and of the Council of xxx establishing a Union Code on Visas (Visa Code) (recast) (OJ L x, xxx, p. x).

30 Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

31 Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L, 81, 21.3.2001, p. 1).

32 Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).

(12) Following the establishment of the touring visa, Article 20(2) of the Convention implementing the Schengen Agreement should be amended as it is incompatible with 77(2)(a) and (c) of the Treaty on the Functioning of the European Union due to the fact that the common policy on visas cannot be based on the existence or non-existence of bilateral visa waiver agreements concluded by Member States. The authorised length of stay of third-country nationals should not depend on the number and content of such bilateral agreements concluded in the past.

(13) A five-year transitional period should be provided for phasing out the impact of bilateral visa waiver agreements as far as the overall length of stay of third-country nationals in the Schengen area is concerned.

(14) In order to ensure uniform conditions for implementation of this Regulation, implementing powers should be conferred on the Commission in respect of establishing operational instructions on the practices and procedures to be followed by Member States when processing touring visa applications. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[33]. The examination procedure should be used for the adoption of such implementing acts.

(15) This Regulation respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full respect for private and family life referred to in Article 7, protection of personal data referred to in Article 8 and the rights of the child referred to in Article 24 of the Charter.

(16) Directive 95/46/EC of the European Parliament and of the Council[34] applies to the Member States with regard to the processing of personal data pursuant to this Regulation.

(17) Since the objectives of this Regulation, namely the introduction of a new type of visa valid in all Member States and the establishment of uniform issuing conditions and procedures, can only be achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.

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

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33 Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

34 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

(19) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC[35]; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(20) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC[36]; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(21) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen *acquis*[37], which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC[38].

(22) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[39], which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC[40].

(23) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis*, within the meaning of the Protocol signed between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[41], which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU[42] on the conclusion of that Protocol.

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

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

37 OJ L 176, 10.7.1999, p. 36.

38 Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

39 OJ L 53, 27.2.2008, p. 52.

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

41 OJ L 160, 18.6.2011, p. 21.

42 Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss

(24) As regards Cyprus, this Regulation constitutes an act building upon, or otherwise related to, the Schengen *acquis*, within the meaning of Article 3(2) of the 2003 Act of Accession.

(25) As regards Bulgaria and Romania, this Regulation constitutes an act building upon, or otherwise related to, the Schengen *acquis* within the meaning of Article 4(2) of the 2005 Act of Accession.

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

HAVE ADOPTED THIS REGULATION:

Chapter I – General Provisions

Article 1

Subject matter and scope

1. This Regulation lays down the conditions and procedures for issuing touring visas.

2. It shall apply to third-country nationals who are not citizens of the Union within the meaning of Article 20(1) of the Treaty, without prejudice to:

   (a) the right of free movement enjoyed by third-country nationals who are family members of citizens of the Union;

   (b) the equivalent rights enjoyed by third-country nationals and their family members, who, under agreements between the Union and its Member States and these third countries, enjoy rights of free movement equivalent to those of Union citizens and members of their families.

3. This Regulation does not affect the provisions of Union or national law applicable to third-country nationals with relation to:

   (a) admission for stays for longer than three months on the territory of one Member State and subsequent mobility to the territory of other Member States;

   (b) access to the labour market and the exercise of an economic activity.

Article 2

Application of Regulation (EC) No 767/2008 and Regulation (EC) No xxx/201x [Visa Code (recast)]

1. Regulation (EC) No 767/2008 shall apply to touring visas.

2. Regulation (EU) No xxx/201x [Visa Code (recast)] shall apply to touring visas, as provided for in Articles 4 to 10.

Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

Article 3

Definitions

For the purposes of this Regulation:

(1) the definitions provided for in Article 2(1), and (11) to (16) of Regulation (EU) No xxx/201x [Visa Code (recast)] shall apply.

(2) 'touring visa' means an authorisation issued by a Member State with a view to an intended stay in the territory of two or more Member States for a duration of more than 90 days in any 180-day period, provided that the applicant does not intend to stay for more than 90 days in any 180-day period in the territory of the same Member State.

Chapter II – Conditions and procedures for issuing touring visas

Article 4

Authorities taking part in the procedures relating to applications

1. Article 4(1), (3), (4) and (5), Article 6(1) and Article 7(2) and (3) of Regulation (EU) No xxx/201x [Visa Code (recast)] shall apply.

2. Applications shall not be examined and decided on at the external borders of the Member States.

3. The Member State competent for examining and deciding on an application for a touring visa shall be the Member State whose external border the applicant intends to cross in order to enter the territory of the Member States.

4. Applications by nationals of third countries listed in Annex II to Regulation (EC) No 539/2001 legally present in the territory of a Member State may be lodged within the territory of that Member State provided that the consulate of the competent Member State has at least 20 calendar days to decide on the application.

5. Applications by third-country nationals, irrespective of their nationality, who hold a valid residence permit or valid long-stay visa issued by a Member State may be lodged within the territory of that Member State at least 20 calendar days before the expiry of the residence permit or long-stay visa.

6. In cases referred to in paragraphs 4 and 5 the competent Member State for examining and deciding on an application for a touring visa shall be the Member State the applicant intends to enter first making use of the touring visa.

Article 5

Application

1. Article 8(1), (2), (5), (6) and (7), Article 9, Article 10(1), and (3) to (7), Article 11, points (b) and (c), Article 12, Article 13(1), points (a) to (d), Article 13(5), (6) and (7), Articles 14 and 15 of Regulation (EU) No xxx/201x [Visa Code (recast)] shall apply.

2. The application form for the touring visa shall be as set out in Annex I.

3. In addition to the criteria set out in Article 11, points (b) and (c), of Regulation (EU) No xxx/201x [Visa Code (recast)], applicants shall present a travel document that is

recognised by the Member State competent for examining and deciding on an application and at least one other Member State to be visited.

4. In addition to the categories of persons listed in Article 12(7) of Regulation (EU) No xxx/201x [Visa Code (recast)], nationals of third countries listed in Annex II of Council Regulation (EC) No 539/2001 shall be exempt from the requirement to give fingerprints. In those cases, the entry 'not applicable' shall be introduced in the VIS in accordance with Article 8(5) of Regulation (EC) No 767/2008.

5. In addition to the supporting documents listed in Article 13(1) of Regulation (EU) No xxx/201x [Visa Code (recast)], applicants shall present:

   (a) appropriate proof that they intend to stay in the territory of two or more Member States for longer than 90 days in any 180-day period without staying for more than 90 days in any 180-day period in the territory of any of these Member States;

   (b) proof that they have sickness insurance for all risks normally covered for nationals of the Member States to be visited.

6. The possession of sufficient means of subsistence and a stable economic situation shall be demonstrated by means of salary slips or bank statements covering a period of 12 months prior to the date of the application, and/or supporting documents that demonstrate that applicants will benefit from or will acquire sufficient financial means lawfully during their stay.

7. If the purpose of the visit requires a work permit in one or more Member States, when applying for a touring visa, it shall be sufficient to prove the possession of a work permit in the Member State competent to examine and decide on an application for a touring visa. Holders of a touring visa shall be allowed to apply in the Member State where they are legally present for the work permit required in the Member State to be visited next.

8. Consulates may waive the requirement to present one or more supporting documents if the applicants work for or are invited by a reliable company, organisation or institution known to the consulate, in particular at managerial level, or as a researcher, student, artist, culture professional, sportsman or a staff member with specialist knowledge, experience and technical expertise and if adequate proof is submitted to the consulate in this regard. The requirement may also be waived for those applicants' close family members, including the spouse, children under the age of 18 and parents of a child under the age of 18, in case they intend to travel together.

Article 6

Examination of and decision on an application

1. Articles 16 and 17, Article 18(1), (4), (5), (9), (10) and (11), Article 19 and Article 20(4), last sentence, of Regulation (EU) No xxx/201x [Visa Code (recast)] shall apply.

2. In addition to the verifications provided in Article 17(1) of Regulation (EU) No xxx/201x [Visa Code (recast)] to assess the admissibility of the application, the competent consulate shall verify whether the travel document satisfies the requirement set out in Article 5(3).

3. The examination of an application for a touring visa shall include, in particular, the assessment of whether applicants have sufficient financial means of subsistence for the

whole duration of the intended stay, including their accommodation, unless it is provided by the inviting or hosting company, organisation or institution.

4. The examination of an application for a touring visa and decision on that application shall be conducted irrespective of stays authorised under previously issued short-stay visas or a short-stay visa waiver, long-stay visas or residence permits.

5. Applications shall be decided on within 20 calendar days of the date of the lodging of an admissible application. Exceptionally, this period may be extended for up to a maximum of 40 calendar days.

Article 7

Issuing of the touring visa

1. Article 21(6), Article 24(1), (3) and (4), Article 25, Article 26(1) and (5), Articles 27 and 28, Article 29(1), point (a)(i) to (iii), (v) and (vi) and point (b), and Article 29(3) and (4) of Regulation (EU) No xxx/201x [Visa Code (recast)] shall apply.

2. The touring visa shall allow for multiple entries to the territory of all Member States, without prejudice to paragraph 5.

3. The length of authorised stay shall be decided on the basis of a thorough examination of the application. The length of authorised stay shall not exceed one year, but it can be extended for up to a further year in accordance with Article 8.

4. The period of validity of the touring visa shall correspond to the length of authorised stay.

5. If applicants hold a travel document that is recognised by one or more, but not all, Member States the touring visa shall be valid for the territory of the Member States which recognise the travel document, provided that the intended stay is longer than 90 days in any 180-day period in the territory of the Member States concerned.

6. The touring visa shall be issued in the uniform format for visas as set out in Council Regulation (EC) No 1683/95[43] with the heading specifying the type of visa with the letter "T".

7. In addition to the reasons of refusal listed in Article 29(1) of Regulation (EU) No xxx/201x [Visa Code (recast)], a visa shall be refused if applicants do not provide:

   (a) appropriate proof that they intend to stay in the territory of two or more Member States for longer than 90 days in any 180-day period without staying for more than 90 days in any 180-day period in the territory of any of these Member States;

   (b) proof that they have sickness insurance for all risks normally covered for nationals of the Member States to be visited.

8. A decision on refusal and the reasons on which it is based shall be notified to the applicant by means of the standard form set out in Annex II.

[43] Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 164, 14.7.1995, p. 1).

Article 8

Modification of an issued visa

1. Article 30(1), (3), (6) and (7) and Article 31(1) to (5), (7) and (8) of Regulation (EU) No xxx/201x [Visa Code (recast)] shall apply.
2. In addition to the possibility of extension for specific reasons provided in Article 30(1) of Regulation (EU) No xxx/201x [Visa Code (recast)], holders of a touring visa may apply for an extension in the territory of the Member States not earlier than 90 days and not later than 15 days before the expiry of their touring visa.
3. The consulate of the Member State to be visited next shall be competent to examine and decide on an application for extension.
4. Applicants shall request the extension by submitting a completed application form as set out in Annex I.
5. A fee of EUR 30 shall be charged for each application for an extension.
6. As regards a work permit, Article 5(7) shall apply for extensions, where applicable.
7. Decisions shall be taken within 15 calendar days of the date of the lodging of an application for an extension.
8. When applying for an extension, applicants shall prove that they continue to fulfil the entry and visa issuing conditions and to comply with the requirement not to stay for more than 90 days in any 180-day period in the territory of a single Member State.
9. During the examination of an application for an extension, the competent authority may in justified cases call applicants for an interview and request additional documents.
10. An extension shall not exceed one year, and the overall length of an authorised stay, that is, the length of the initially authorised stay and its extension, shall not exceed two years.
11. A decision to refuse an extension and the reasons on which it is based shall be notified to the applicant by means of the standard form set out in Annex II.
12. Applicants whose application for an extension has been refused shall have the right to appeal. Appeals shall be introduced against the Member State that has taken the final decision on the application for an extension and in accordance with the national law of that Member State. Member States shall provide applicants with detailed information regarding the procedure to be followed in the event of an appeal, as specified in Annex II.
13. A decision on annulment or revocation of a touring visa and the reasons on which it is based shall be notified to the applicant by means of the standard form set out in Annex II.

Chapter III – Administrative management and organisation

Article 9

Administrative management and organisation

1. Articles 35 to 43, Article 45, Article 52(1)(a), (c) to (f) and (h) and Article 52(2) of Regulation (EU) No xxx/201x [Visa Code (recast)] shall apply.

2. Member States shall compile annual statistics on touring visas, in accordance with Annex III. These statistics shall be submitted to the Commission by 1 March of each year for the preceding calendar year.

3. The information on time limits for examining applications to be provided to the general public, referred to in Article 45(1)(e) of Regulation (EU) No xxx/201x [Visa Code (recast)], shall also comprise the time limits for touring visas, laid down in Article 6(5) of this Regulation.

4. In the framework of local Schengen cooperation, within the meaning of Article 46 of Regulation (EU) No xxx/201x [Visa Code (recast)], quarterly statistics on touring visas applied for, issued and refused as well as information on the types of applicants shall be exchanged.

Chapter IV – Final provisions

Article 10

Instructions on the practical application of this Regulation

The Commission shall by means of implementing acts adopt the operational instructions on the practical application of the provisions of this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 11(2).

Article 11

Committee procedure

1. The Commission shall be assisted by the committee established by Article 51(1) of Regulation (EU) No xxx/201x [Visa Code (recast)] (the Visa Committee).

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

Article 12

Amendment to the Convention implementing the Schengen Agreement

Article 20(2) of the Convention implementing the Schengen Agreement shall be replaced by the following:

‘2. Paragraph 1 shall not affect each Contracting Party’s right to extend beyond 90 days an alien’s stay in its territory in exceptional circumstances.’

Article 13

Amendments to Regulation (EC) No 562/2006

Regulation (EC) No 562/2006 is amended as follows:

(1) Article 5 is amended as follows:

(a) in paragraph 1, point (b) is replaced by the following:

‘(b) they are in possession of a valid visa, if required pursuant to Council Regulation (EC) No 539/2001*, or hold a valid touring visa as defined in Article 3(2) of Regulation (EU) No xxx/201x of xxx **, valid residence permit or a valid long-stay visa;

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* Council Regulation (EC) No 539/2001* of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p. 1).

** Regulation (EU) No xxx/201x of the European Parliament and of the Council of xx.xx.201x establishing a touring visa and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 562/2006 and (EC) No 767/2008 (OJ L xxx).'

(b) paragraph 1a is replaced by the following:

'1a. For the purposes of implementing paragraph 1, the date of entry shall be considered as the first day of stay on the territory of the Member States and the date of exit shall be considered as the last day of stay on the territory of the Member States. Periods of stay authorised under a touring visa, residence permit or a long-stay visa shall not be taken into account in the calculation of the duration of stay on the territory of the Member States.'

(c) the following paragraph 3a is inserted:

'3a. Paragraphs 1 to 3 shall be applicable *mutatis mutandis* for entries related to stays on the basis of a valid touring visa.'

(2) Article 7(3) is amended as follows:

(a) point (aa) is replaced by the following:

'(aa) if the third country national holds a visa or touring visa referred to in Article 5(1)(b), the thorough checks on entry shall also comprise verification of the identity of the holder of the visa/touring visa and of the authenticity of the visa/touring visa, by consulting the Visa Information System (VIS) in accordance with Article 18 of Regulation (EC) No 767/2008 of the European Parliament and of the Council***;

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*** Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L, 218, 13.8.2008, p. 60). '

(b) the penultimate sentence of point (ab) is replaced by the following:

'However, in all cases where there is doubt as to the identity of the holder of the visa or touring visa and/or the authenticity of the visa or touring visa, the VIS shall be consulted systematically, using the number of the visa sticker in combination with the verification of fingerprints.'

(c) in point (c), point (i) is replaced by the following:

'(i) verification that the person is in possession of a valid visa, if required pursuant to Regulation (EC) No 539/2001, or valid touring visa, except where he or she holds a valid residence permit or valid long-stay visa; such verification may comprise consultation of the VIS in accordance with Article 18 of Regulation (EC) No 767/2008;'

Article 14

Amendment to Regulation (EC) No 767/2008

Regulation (EC) No 767/2008 is amended as follows:

(1) Article 1 is replaced by the following:

‘This Regulation defines the purpose of, the functionalities of and the responsibilities for the Visa Information System (VIS), as established by Article 1 of Decision 2004/512/EC. It sets up the conditions and procedures for the exchange of data between Member States on applications for short-stay visas and touring visas as defined in Article 3(2) of Regulation (EU) No xxx/201x of xxx* and on decisions taken in relation thereto, including decisions to annul, revoke or extend the visa, to facilitate the examination of such applications and related decisions.

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* Regulation (EU) No xxx/201x of the European Parliament and of the Council of xx.xx.201x establishing a touring visa and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 562/2006 and (EC) No 767/2008 (OJ L xxx).’

(2) Article 4 is amended as follows:

(a) in point 1 the following point is added:

‘(e) ‘touring visa’ as defined in Article 3(2) of Regulation (EU) No xxx/201x;’

(b) points 4 and 5 are replaced by the following:

‘4. ‘application form’ means the uniform application form for visas in Annex I to Regulation (EC) No xxx/201x [Visa Code (recast)] or Annex I to Regulation (EU) No xxx/201x;

5. ‘applicant’ means any person subject to the visa requirement pursuant to Council Regulation (EC) No 539/2001**, who has lodged an application for a visa, or any person who has lodged an application for a touring visa pursuant to Regulation (EU) No xxx/201x;

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** Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p.1). ’

(3) In Article 14(2) the following point (e) is added:

‘(e) request for extension and continued fulfilment of the conditions by a holder of a touring visa.’

Article 15

Monitoring and evaluation

By [three years after the date of application of this Regulation] the Commission shall evaluate the application of this Regulation.

Article 16

Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from [6 months after the entry into force of this Regulation].
3. Article 12 shall apply from [5 years after the entry into force of this Regulation].
4. This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President