Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)

REGULATION (EC) No 810/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 July 2009

establishing a Community Code on Visas

(Visa Code)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62(2)(a) and (b)(ii) thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(1)],

Whereas:

(1) In accordance with Article 61 of the Treaty, the creation of an area in which persons may move freely should be accompanied by measures with respect to external border controls, asylum and immigration.

(2) Pursuant to Article 62(2) of the Treaty, measures on the crossing of the external borders of the Member States shall establish rules on visas for intended stays of no more than three months, including the procedures and conditions for issuing visas by Member States.

(3) As regards visa policy, the establishment of a 'common corpus' of legislation, particularly via the consolidation and development of the *acquis* (the relevant provisions of the Convention implementing the Schengen Agreement of 14 June 1985[(2)] and the Common Consular Instructions[(3)], is one of the fundamental components of 'further development of the common visa policy as part of a multi-layer system aimed at facilitating legitimate travel and tackling illegal immigration through further harmonisation of national legislation and handling practices at local consular missions', as defined in the Hague Programme: strengthening freedom, security and justice in the European Union[(4)].

(4) Member States should be present or represented for visa purposes in all third countries whose nationals are subject to visa requirements. Member States lacking their own consulate in a given third country or in a certain part of a given third country should endeavour to conclude representation arrangements in order to avoid a disproportionate effort on the part of visa applicants to have access to consulates.

(5) It is necessary to set out rules on the transit through international areas of airports in order to combat illegal immigration. Thus nationals from a common list of third

countries should be required to hold airport transit visas. Nevertheless, in urgent cases of mass influx of illegal immigrants, Member States should be allowed to impose such a requirement on nationals of third countries other than those listed in the common list. Member States' individual decisions should be reviewed on an annual basis.

(6) The reception arrangements for applicants should be made with due respect for human dignity. Processing of visa applications should be conducted in a professional and respectful manner and be proportionate to the objectives pursued.

(7) Member States should ensure that the quality of the service offered to the public is of a high standard and follows good administrative practices. They should allocate appropriate numbers of trained staff as well as sufficient resources in order to facilitate as much as possible the visa application process. Member States should ensure that a 'one-stop' principle is applied to all applicants.

(8) Provided that certain conditions are fulfilled, multiple-entry visas should be issued in order to lessen the administrative burden of Member States' consulates and to facilitate smooth travel for frequent or regular travellers. Applicants known to the consulate for their integrity and reliability should as far as possible benefit from a simplified procedure.

(9) Because of the registration of biometric identifiers in the Visa Information System (VIS) as established by Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)[(5)], the appearance of the applicant in person — at least for the first application — should be one of the basic requirements for the application for a visa.

(10) In order to facilitate the visa application procedure of any subsequent application, it should be possible to copy fingerprints from the first entry into the VIS within a period of 59 months. Once this period of time has elapsed, the fingerprints should be collected again.

(11) Any document, data or biometric identifier received by a Member State in the course of the visa application process shall be considered a consular document under the Vienna Convention on Consular Relations of 24 April 1963 and shall be treated in an appropriate manner.

(12) 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[(6)] applies to the Member States with regard to the processing of personal data pursuant to this Regulation.

(13) In order to facilitate the procedure, several forms of cooperation should be envisaged, such as limited representation, co-location, common application centres, recourse to honorary consuls and cooperation with external service providers, taking into account in particular data protection requirements set out in Directive 95/46/EC. Member States should, in accordance with the conditions laid down in this Regulation, determine the type of organisational structure which they will use in each third country.

(14) It is necessary to make provision for situations in which a Member State decides to cooperate with an external service provider for the collection of applications. Such a decision may be taken if, in particular circumstances or for reasons relating to the local situation, cooperation with other Member States in the form of representation, limited representation, co-location or a Common Application Centre proves not to be appropriate for the Member State concerned. Such arrangements should be established in compliance with the general principles for issuing visas and with the data protection requirements set out in Directive 95/46/EC. In addition, the need to avoid visa shopping should be taken into consideration when establishing and implementing such arrangements.

(15) Where a Member State has decided to cooperate with an external service provider, it should maintain the possibility for all applicants to lodge applications directly at its diplomatic missions or consular posts.

(16) A Member State should cooperate with an external service provider on the basis of a legal instrument which should contain provisions on its exact responsibilities, on direct and total access to its premises, information for applicants, confidentiality and on the circumstances, conditions and procedures for suspending or terminating the cooperation.

(17) This Regulation, by allowing Member States to cooperate with external service providers for the collection of applications while establishing the 'one-stop' principle for the lodging of applications, creates a derogation from the general rule that an applicant must appear in person at a diplomatic mission or consular post. This is without prejudice to the possibility of calling the applicant for a personal interview.

(18) Local Schengen cooperation is crucial for the harmonised application of the common visa policy and for proper assessment of migratory and/or security risks. Given the differences in local circumstances, the operational application of particular legislative provisions should be assessed among Member States' diplomatic missions and consular posts in individual locations in order to ensure a harmonised application of the legislative provisions to prevent visa shopping and different treatment of visa applicants.

(19) Statistical data are an important means of monitoring migratory movements and can serve as an efficient management tool. Therefore, such data should be compiled regularly in a common format.

(20) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(7)].

(21) In particular, the Commission should be empowered to adopt amendments to the Annexes to this Regulation. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(22) In order to ensure the harmonised application of this Regulation at operational level, instructions should be drawn up on the practice and procedures to be followed by Member States when processing visa applications.

(23) A common Schengen visa Internet site is to be established to improve the visibility and a uniform image of the common visa policy. Such a site will serve as a means to provide the general public with all relevant information in relation to the application for a visa.

(24) Appropriate measures should be adopted for the monitoring and evaluation of this Regulation.

(25) The VIS Regulation and 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)[8] should be amended in order to take account of the provisions of this Regulation.

(26) Bilateral agreements concluded between the Community and third countries aiming at facilitating the processing of applications for visas may derogate from the provisions of this Regulation.

(27) When a Member State hosts the Olympic Games and the Paralympic Games, a particular scheme facilitating the issuing of visas to members of the Olympic family should apply.

(28) Since the objective of this Regulation, namely the establishment of the procedures and conditions for issuing visas for transit through or intended stays in the territory of the Member States not exceeding three months in any six-month period, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(29) This Regulation respects fundamental rights and observes the principles recognised in particular by the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms and by the Charter of Fundamental Rights of the European Union.

(30) The conditions governing entry into the territory of the Member States or the issue of visas do not affect the rules currently governing recognition of the validity of travel documents.

(31) In accordance with Articles 1 and 2 of the Protocol on the Position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation and is not bound by it, or subject to its application. Given that this Regulation builds on the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of that Protocol, decide within a period of six months after the date of adoption of this Regulation whether it will implement it in its national law.

(32) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded between the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*[9] which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC[10] on certain arrangements for the application of that Agreement.

(33) An arrangement should be made to allow representatives of Iceland and Norway to be associated with the work of committees assisting the Commission in the exercise of its implementing powers under this Regulation. Such an arrangement has been contemplated in the Exchange of Letters between the Council of the European Union and Iceland and Norway concerning committees which assist the European Commission in the exercise of its executive powers[11], annexed to the abovementioned Agreement. The Commission has submitted to the Council a draft recommendation with a view to negotiating this arrangement.

(34) 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*[12], which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC[13] on the conclusion of that Agreement.

(35) As regards Liechtenstein, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Protocol signed between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement concluded between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC[14] on the signing of that Protocol.

(36) 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 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*[15]. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(37) 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 of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*[16]. Ireland is therefore not taking part in the adoption of the Regulation and is not bound by it or subject to its application.