



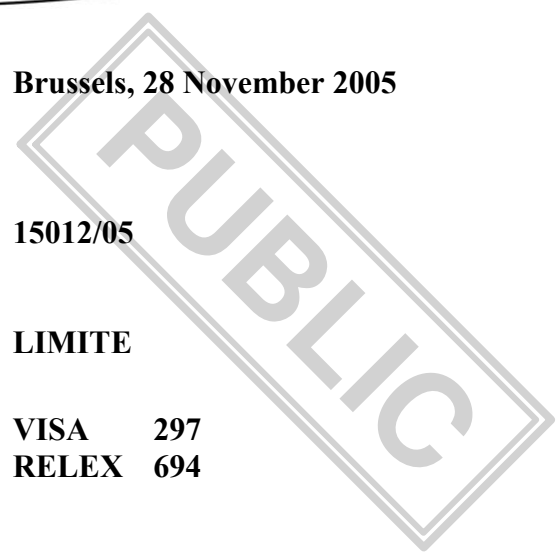
**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 28 November 2005

15012/05

LIMITE

**VISA 297
RELEX 694**



NOTE

from :	High Level Working Group on Migration and Asylum
to :	Permanent Representatives Committee
Subject :	Common approach on visa facilitation

1. On 20 July 2005, the Permanent Representatives Committee tasked the High Level Working Group on Migration and Asylum (HLWG) to draw up guidelines on a coherent framework approach on the issue of visa facilitation, which covers migration, security and external relations.
2. The Presidency, taking into account the exchange of views which took place in the HLWG meetings, as well as the written comments sent by delegations, submitted a draft text, which was examined several times by the HLWG, the last time being on 10 November. On 25 November, the JHA Counsellors examined the text revised by the Presidency following the last HLWG meeting. The text resulting from the JHA Counsellors meeting is attached to the present note.
3. The Permanent Representatives Committee is invited to examine the outstanding issues, with a view to agreeing on a Common approach on visa facilitation.

Common approach on visa facilitation

Visa facilitation measures for individual countries should be part of a common approach which reflects priorities and differentiation in order to avoid a piecemeal response based exclusively on pressures from third countries. This paper seeks to set out the key elements underpinning the Community's common approach in the area of visa facilitation.

1. The common approach deals only with visa facilitation, i.e. simplification of visa issuing procedures for nationals of third countries who are under visa obligation. Visa facilitation is a distinct and separate issue from that of visa liberalisation, which would entail the introduction of a visa free regime and is regulated by Council Regulation 539/2001. When a third country, who is exempt from the requirement of a visa for entering the EC, maintains a visa requirement on one or more EC member States, this situation is covered by the reciprocity mechanism of Council Regulation 851/2005.
2. As regards the decision to open visa facilitation negotiations with third countries, the common approach is based on a case by case assessment of third countries, while bearing in mind the EU's overall relationship with candidate countries, countries with a European perspective and countries covered by the European Neighbourhood Policy as well as strategic partners. The merits of the case of each country must be assessed individually, reflecting the factors in paragraph 6 and the process set out in paragraphs 11 and 12.
3. According to the Hague Programme of 4-5 November 2004 "*The European Council invites the Council and the Commission to examine, with a view to developing a common approach, whether in the context of the EC readmission policy it would be opportune to facilitate, on a case by case basis, the issuance of short-stay visas to third country nationals, where possible and on the basis of reciprocity, as part of a real partnership in external relations, including migration-related issues*". The Action Plan of 2-3 June 2005 implementing the Hague Programme includes this item for action.

4. Readmission is a priority for the EU, both as regards external relations and the area of freedom, security and justice. In principle, a visa facilitation agreement would not be concluded if no readmission agreement were in place, without prejudice to the rhythm of negotiations.¹
5. However, the existence of a readmission agreement, or the willingness of a third-country to negotiate one, does not automatically nor routinely lead to the opening of negotiations on a visa facilitation agreement. The EU shall² consider making use of other instruments to achieve the conclusion and implementation of a readmission agreement, e.g. political, economic, commercial or development policy related.
6. The EC should take account of the following factors inter alia in deciding whether to open negotiations on visa facilitation with third countries: whether a readmission agreement is in place, under negotiation,³ or is to be negotiated; external relations objectives; implementation record of existing bilateral agreements and progress on related issues in the area of justice, freedom and security (e.g. border management, document security, migration and asylum, fight against terrorism, organised crime and corruption); and security concerns,⁴ migratory movements and the impact of the visa facilitation agreement.

¹ **ES** and **FR** scrutiny reservation on the last part of the sentence.

DE scrutiny reservation; DE wished to add the following sentence: "As opposed to readmission agreements, visa facilitation shall not be offered to third countries proactively."

² **NL** scrutiny reservation.

³ **DE** and **ES** scrutiny reservation.

⁴ **DE** scrutiny reservation; DE wished to amend the last sentence to read as follows: "...and security concerns, adoption of the clause on fighting terrorism in agreements with the EU/EC, migratory movements, low migratory pressure, rule of law and the impact of the visa facilitation agreement."

7. The substance of a visa facilitation agreement is likely to vary from one country to another, depending on the visa policy of the country concerned, the introduction of biometric passports and the existing practical problems. Differentiation in substance ensures that each agreement is tailored to the specific situation and requirements of a third country.
8. Negotiations on a visa facilitation agreement between the EC and a third country are based generally on the principle of reciprocity.^{1,2}
9. A Community visa facilitation agreement takes precedence over any bilateral agreement between one or more Member State and the third country in question, insofar as the provisions of the latter cover provisions dealt with by the Community agreement.³
10. There should be inclusion of a monitoring mechanism and a suspension clause in visa facilitation agreements to allow the EU to suspend, at any time, the application of the agreement in case of difficulties in respect of implementation or unexpected political developments.

¹ **DE** scrutiny reservation.

² **LT** scrutiny reservation; LT wished the following text to be added at the end of this paragraph: "In exceptional cases, EC visa facilitations can be implemented unilaterally for the third countries if there is common agreement of EU Member States and if that is necessary for the interests of the Community, for the spreading of the founding principles of democracy, supremacy of law and etc."

³ **LT** scrutiny reservation.

Process

11. Before bringing forward a negotiating mandate, the Commission consults with Member States, in both competent JHA and geographical Council groups, and subsequently carries out exploratory talks with the third country concerned. These exploratory talks enable the Commission to gather the necessary technical information about a third country's visa system in order to elaborate the negotiating directives.
12. To ensure the coherence between issues relating to external relations on the one hand, and to freedom, security and justice concerns on the other, relevant JHA Council groups, in close consultation with the relevant geographical working groups, will prepare the adoption of negotiating directives in Council.
13. It will be necessary to review the common approach on visa facilitation, possibly in the first half of 2008,¹ in the light of experiences from negotiations and implementation as well as other relevant developments.

¹ HU scrutiny reservation; HU would prefer 2007.