

[Courtesy translation]

European Affairs Committee's

Opinion

of May 28, 2014

on the observance of the principle of subsidiarity in COM(2014) 163 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

According to Article 185¹(1) of the Rules of procedure of the Saeima, the Saeima shall participate in the EU affairs through the European Affairs Committee, unless the Saeima has ruled otherwise. At its hearing of 28 May 2014, the European Affairs Committee has adopted an opinion concerning the observance of the principle of subsidiarity in European Commission's ("Commission") 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 562/2006¹ and (EC) No 767/2008² ("Regulation").

In evaluating the observance of the principle of subsidiarity pursuant to the provisions of Protocol Nr. 2 of the EU Treaties on the application of the principles of subsidiarity and proportionality, the European Affairs Committee identified certain shortcomings in the draft Regulation.

1. Legal basis of the Regulation

¹ 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)

² 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)

The European Affairs Committee was not convinced that Article 77(2)(a)(b)(c) of the Treaty on the Functioning of the European Union (“TFEU”) constitutes the appropriate legal basis for the adoption of the Regulation.

According to settled case-law of the Court of Justice of the European Union, the appropriateness of the legal basis for a measure is assessed on the basis of objective factors such as main or predominant purpose of the measure and its content.³

Article 77(2)(a)(b)(c) is one of the chapter on EU policy on border checks, asylum and immigration provisions, and its aim is to facilitate legitimate travel and to prevent irregular immigration. Under this Article, the EU legislators have the power to adopt measures on the common policy on visas, on the checks to which persons crossing external borders are subject, and on the conditions under which the nationals of third countries shall have the freedom to travel within the Union for a short period.

Having examined the content of the draft Regulation, as well as the supporting documents – the Explanatory Memorandum and the Impact Assessment⁴, the European Affairs Committee believes that the proposed Regulation is designed not only as an instrument of the common visa policy but also to a great extent as an economic growth fostering instrument.

4th recital in the Preamble to the proposed Regulation stipulates that the fact that students, researchers, culture professionals, pensioners, business people, service providers as well as tourists may not stay in the Schengen area longer than 90 days in any 180-day period leads to a loss of potential visitors and consequently to an economic loss.

Similarly, it is frequently emphasised in the Explanatory Memorandum that these travellers are considered to be “big spenders” and therefore likely to generate

³ Judgment of 22 October 2013, *European Commission v. Council of the European Union* (C-137/12, EU:C:2013:675, paragraph 74).

⁴ Impact Assessment accompanying „Proposal for a Regulation of the European Parliament and of the Council on the Union Code on Visas (Visa Code) (recast)”, SWD(2014) 68.

considerable revenue and boost economic activity in the EU, not least because they stay longer in the Schengen area.⁵

The Impact Assessment, in its turn, recognizes that one of the general policy objectives of the proposed initiative is to foster economic growth.⁶

The importance of considerations related to growth and EU tourism and employment interests has been upheld in the recently published Commission's initiative to work towards a smarter visa policy and to develop its economic dimension and its potential for fostering growth. Namely, on 1 April 2014, the Commission published "*A smarter visa policy for economic growth*" report which evaluates the implementation of the Visa Code and proposes to adopt more flexible visa rules in order to boost economic growth and job creation, and to achieve a greater coherence of the visa policy with other EU policies.⁷

Whereas the above mentioned objectives of stimulating growth, employment and tourism are emphasized through the draft Regulation, the European Affairs Committee considers that the chosen legal basis of the Regulation is too narrow and does not fully reflect all the aims that it pursues. Therefore, it would be preferable to indicate which other Treaty provisions, together with Article 77(2)(a)(b)(c) TFEU, confer the necessary powers for the EU to act in order achieve the above mentioned objectives. For instance, in the tourism sector, the Union only complements the action of the Member States, excluding any harmonisation of the laws and regulations of the Member States.⁸

Finally, the European Affairs Committee has doubts as to the choice of Article 77(2)(a)(b)(c) TFEU as the legal basis because this provision regulates only **short-stay** residence of third country nationals in the EU. Since the proposed Regulation provides that the total length of an authorized stay under the touring visa may be **two years**⁹ (initial length of the authorized stay and an eventual extension), it does not seem certain that this new type of visa can be regarded as "short-term" within the meaning of Article 77 TFEU.

⁵ Explanatory Memorandum, page 6

⁶ Impact Assessment, page 8

⁷ "A smarter visa policy for economic growth", Report from the Commission to the European Parliament and the Council, COM(2014) 165

⁸ Article 195 TFEU

⁹ Article 7(3) of the draft Regulation

2. Regulation's necessity, added value and proportionality of proposed rules

The European Affairs Committee considers that neither the necessity nor the added value of creating a touring visa has been sufficiently substantiated. In its Explanatory Memorandum, the Commission itself admits that the number of potential beneficiaries of the new authorisation is rather limited.¹⁰

Furthermore, from the perspective of the proportionality principle, the Commission's proposal does not explain how the benefits likely to arise as a result of the introduction of the touring visa will be balanced against the costs that will be required in order to maintain a high security level in the Schengen area.

Finally, the European Affairs Committee considers that there is a risk of an abuse of the rights provided for in the draft Regulation.

On these grounds, the European Affairs Committee takes the view that the 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, in its current version, **complies with the principle of subsidiarity** as defined in Article 5(3) of the Treaty on the European Union. However, we invite the Commission to take into account the above mentioned considerations in its further work on the draft Regulation.

¹⁰ Explanatory Memorandum, page 6