

# NON – PAPER

## EXPANDING ON THE PROPOSALS CONTAINED IN THE COMMUNICATION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL ON “STRENGTHENING THE ENP” – COM (2006) 726 FINAL OF 4 DECEMBER 2006

### ENP - VISA FACILITATION

#### I. Introduction.

The ability of people to move and interact with each other is of the utmost importance not only within the EU but also within the neighbourhood. As explained in the December 2006 Communication on Strengthening the ENP<sup>1</sup> and the more recent Communication on extending the Global Approach to eastern and south-eastern neighbours<sup>2</sup>, it is the lynchpin of the European Neighbourhood Policy, itself a key foreign policy priority of the EU.

The EU cannot fully deliver on many aspects of the European Neighbourhood Policy if the ability to undertake legitimate short-term travel remains constrained. Mobility is also the most visible and immediate way in which the citizens of our partner countries could benefit from the deeper and closer relationships desired on both sides. There is room for improvement regarding the issuance of visas by the EU Member States in order to be consistent with the expressed intention of the ENP to avoid the creation of dividing lines and to form close relationships with our neighbours. This situation has a negative impact on the perception of the EU in our neighbourhood.

#### II. The context.

This non-paper is a contribution to the follow-up to the Commission's earlier recommendations in this area, on which the December 2006 European Council and January 2007 General Affairs Council recommended further work. It is also related to the May 2007 Commission Communication on extending the Global Approach to the East and South East.

Considering the need for a "very serious examination of how visa procedures can be made less of an obstacle to legitimate travel from neighbouring countries to the EU (and vice versa)...in the context of broader packages to address related issues", the Commission has already recommended, in the above mentioned Communication of 4 December 2006, that negotiations on readmission and visa facilitation should be initiated with ENP countries. In addition, in its May 2007 Communication, the Commission considers it absolutely essential that dialogue and agreements on mobility issues be enhanced in the EU's relations with ENP partner countries. In this regard, the Commission stresses that visa facilitation for particular categories of persons should be

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<sup>1</sup> Communication “Strengthening the ENP”, COM(2006)726 of 4.12.2006

<sup>2</sup> "Applying the Global Approach to Migration to the Eastern and South-Eastern Regions Neighbouring the European Union", COM (2007) 247 final of 16 May 2007.

promoted as a matter of priority, particularly for business, official and educational purposes, and suggested that **mobility partnerships** for ENP countries be considered, including in particular possibilities for **visa facilitation**, work permits and information related to seasonal labour market needs within the EU.

The political mandate on visa facilitation is stated in the Hague Programme approved in November 2004 in which *“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 procedure for opening negotiations on visa facilitation with third countries was spelled out in the "Common approach on visa facilitation" approved in December 2005, where it is stated that *"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 or under active negotiation; 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, according to the standard counterterrorism clause agreed by COREPER on 6 March 2002, organised crime and corruption); and security concerns, migratory movements and the impact of the visa facilitation agreement."*

Third countries willing to negotiate a visa facilitation agreement will normally be invited to negotiate a readmission agreement in parallel, which would be reciprocal and should normally cover own nationals illegally staying in the territory of one of the Parties as well as third country nationals illegally staying in the territory of one of the Parties.

The readmission agreement will specify a short delay for reply to the readmission application by the requested State, which once expired, would lead to the presumption of acceptance of the transfer by this State. The Agreement will also guarantee a timely issuance of travel documents within the specified time limits, as well as providing for any other necessary technical provisions regarding the readmission procedure (i.e. the form and content of the readmission application, means of evidence, transfer modalities and means of transportation).

The implementation of the European Community readmission agreements already in place will be considered by a special Joint Committee composed of both Parties (i.e. the European Community, represented by the Commission, and the third State). The Agreements will also be further complemented by bilateral protocols concluded between the third State in question and any of the Member States.

In this context, negotiations on visa facilitation and readmission agreements have already been finalised with Moldova and Ukraine; their signature, conclusion and entry into force

should take place before the end of the year. Each visa facilitation agreement provides for some facilitations which apply to all visa applicants. Firstly, in principle, for all visa applicants, a decision on whether or not to issue a visa will have to be taken within 10 calendar days. This period may be extended up to 30 days when further scrutiny is needed. In urgent cases, the period for taking a decision may be reduced to 3 days or less. Moreover, the visa fee for processing visa applications for Moldovan and Ukrainian visa applicants - except for those categories for whom the visa fee is waived - is fixed at €35, instead of the €60 charged for a Schengen visa. The documents to be presented have been simplified for some categories of persons such as close relatives, business people, members of official delegations, students, participants in scientific, cultural, artistic and sporting events, journalists, persons visiting military and civil burial grounds, persons visiting for medical reasons and drivers conducting international cargo and passenger transportation services. For these categories of persons, only the documents listed in the agreement can be requested for justifying the purpose of the journey. No other justification, invitation or validation provided for by the legislation of the Parties is required. There are also simplified criteria for issuing multiple-entry visas for some of the categories of persons mentioned above: i.e. close relatives, business people, members of official delegations, participants in scientific, cultural, artistic and sporting events, journalists and drivers conducting international cargo and passenger transportation services. Finally, the holders of Ukrainian and Moldovan diplomatic passports are exempted from the visa requirement for short stays. The entry into force of these agreements is legally linked to the entry into force of the EC-readmission agreement with the third country concerned.

The new EU-Russia visa facilitation agreement risks having unintended consequences with regard to Georgian citizens, in the breakaway regions, holding Russian passports. Their eligibility for the visa facilitation provided under that agreement might have a negative effect on the reintegration of the breakaway regions in Georgia.

Negotiations with Morocco on a readmission agreement have been on going for a number of years but have not yet borne fruit. Preliminary discussions on the opportunity of engaging in such negotiations have been held with Algeria. The Algerian authorities have indicated that negotiating a readmission agreement for third country nationals is intrinsically linked to visa facilitation for Algerian citizens.

### **III. The current situation in legal and practical terms.**

#### **III.1. Legal situation:**

Firstly, it has to be recalled that the Community competence only extends to short-stay visas, i.e. visas issued for a validity of up to three months, also called uniform visas or "Schengen visas", as these visas allow, if the entry conditions are met, to cross the border and circulate in the whole Schengen area. Long-stay visas, i.e. visas for stays exceeding three months are national visas issued by each Member State in accordance with its national law.

The basic rules on the conditions and procedures for issuing Schengen visas are laid down in the Common Consular Instructions<sup>3</sup>. There are some flexibilities allowed in the Common Consular Instructions for issuing visas, i.e. issuance of multiple-entry visas for a long period of validity (up to five years) or reducing checks when the applicant is known to be a bona fide person in the framework of local consular cooperation. Moreover, the visa fee may be waived or reduced, in individual cases, when this measure serves the promotion of cultural interests, foreign policy, development policy or other areas of vital public interest or for humanitarian reasons. It is for the Member States to make use, in individual cases, of this flexibility.

In February 2003 the Council adopted Conclusions on flexibility in issuing Schengen visas to participants in Euro-Mediterranean meetings<sup>4</sup>. The purpose of these Conclusions was to formulate a concrete political message strengthening Euro-Mediterranean Partnership and facilitating the mobility of a specific category of persons, without creating any new legal obligations for Member States. A Member State on whose territory a Euro-Mediterranean meeting is taking place is invited to grant to the participants uniform short-stay multiple-entry visas valid for one or, exceptionally, several years.

### III.2. Outstanding difficulties:

The implementation of the common visa policy is facing a series of problems of varying nature:

- An important problem is the absence of consulates of all or some Member States in a certain third country, or their location; this obliges applicants to travel long distances or to neighbouring countries to even apply for visas<sup>5</sup>. There is also room for improvement in the reception conditions for visa applicants including in terms of transparency of information provided, deadline for processing visa applications, need to repeatedly appear in person etc.
- However, there are also numerous problems with the implementation of the Common Consular Instructions (CCI): there is an overall lack of transparency and information on the conditions for issuing visa and the procedures to be followed; there is no general obligation to motivate a visa refusal or to provide an appeal possibility against such a refusal; one of the main problems identified is related to the supporting documents required to process the visa application. This list of documents is not harmonised and this leads to different document requirements from one consulate to another.
- It also seems that flexibilities that are possible under existing legislation are not fully exploited by the Member States, such as the issuance of multiple-entry visa valid for a period up to five years to bona fide travellers.

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<sup>3</sup> OJ C326 of 22.12.2005, p.1.

<sup>4</sup> 5784/07 VISA 32 MED 3 COMIX 101

<sup>5</sup> This is particularly problematic in cases when travel to the relevant consulate is impossible e.g. for Georgian applicants to travel to Moscow.

- In practice, a €60 fee as well as some of the documentation requirements may represent a difficulty for certain applicants from ENP countries.
- The more immediate issue, in the case of the European Neighbourhood Policy is how to achieve, in 2007, a degree of visa facilitation for key reform constituencies such as students and officials, particularly those travelling for "EU business" e.g.
  - Government officials and civil servants involved in the mechanics of ENP (Association Committees, Cooperation Councils or Committees, sub-Committees, Euro-Mediterranean meetings etc); due to the fact that Brussels is the headquarters of several EU institutions, Belgian diplomatic mission and consular posts issue an important percentage of visas issued for persons travelling on EU business<sup>6</sup>.
  - Participants in EC-funded training activities, conferences, scholarships etc.

According to statistics those travelling for educational reasons or on "EU business" are a very small percentage of overall visa traffic in the neighbourhood. The political benefits of acting in relation to these categories would therefore far outweigh any effort involved.

#### **IV. Legislative developments:**

##### **IV.1 Specific rules applicable to students and researchers.**

Regarding visa facilitations for students, a distinction has to be made regarding the length of stay for educational purposes.

Schengen visas are issued for stays of up to three months. In this context, in accordance with Council Decision 440/2006/EC, as from 1<sup>st</sup> January 2007, for school pupils, students, post-graduates and accompanying teachers who undertake trips for the purpose of study or educational purposes, the visa fee (€60) is fully waived. The visa fee is also waived for researchers from third countries travelling within the Community for the purpose of carrying out scientific research as defined in Recommendation 2005/761/EC of the European Parliament and of the Council of 28 September 2005<sup>7</sup>.

The admission of third-country students for the purpose of studies for periods exceeding three months is regulated in the Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, vocational training or voluntary service.<sup>8</sup> The Directive should have been transposed into national legislation by 12 January 2007. This Directive aims at facilitating the entry and residence of third country students based on the recognition that attracting these students to come to Europe constitutes a form of mutual enrichment

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<sup>6</sup> Differences in treatment of neighbouring countries also causes confusion e.g. that Moroccan and Tunisian officials can enter Belgian territory "visa free" while their Algerian colleagues must still request a visa. This is due to the lack of harmonisation; it is up to Member States to provide for exceptions from the visa requirement for holders of service and diplomatic passports in accordance with Article 4 of Regulation (EC)No 539/2001.

<sup>7</sup> OJ L 289 of 3.11.2005, p.23.

<sup>8</sup> OJ L375 of 23.12.2004, p.12.

between cultures, with beneficial effect on the quality and dynamism of our own training systems. The Directive also applies to pupils, trainees and volunteers, but its application to these categories of persons is subject to an “opt-in” for Member States.

Once admitted, third country students have a right to mobility within the EU, if they follow in another Member State part of the studies already commenced, or if they complement them with a related course of study in another Member State. Outside their study time and subject to the rules and conditions applicable to the relevant activity in the host Member State, students are entitled – under the Directive - to exercise economic activities (“student’s jobs”).

Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research provides for a fast track procedure for the admission of third country researchers. This Directive should be transposed by Member States into national legislation by 12 October 2007. On the basis of the hosting agreement, the immigration authorities of the host country will deliver a residence permit in an accelerated procedure. Holders of such residence permit enjoy equal treatment with nationals in a number of areas, for example social security or working conditions. Once such permit is granted, the researcher will also be free to move within most Member States (Schengen countries & Ireland) to carry out the research project.

#### IV.2 People-to-people contacts in the border areas.

Regulation 1931/2006 of 20 December 2006<sup>9</sup> provides the possibility for Member States to establish bilateral agreements with the ENP-countries concerned. This Regulation establishes a “local border traffic permit”, which allows local border residents to use certain border crossing facilities: specific border crossing points are open only to border residents, specific lanes at ordinary border crossing points or, taking into account the local circumstances, and where exceptionally there is a requirement of a special nature, authorise border residents to cross the external border crossing points at defined places other than authorised border crossing points and outside the fixed hours. The local border traffic permit can be issued free of charge. Moreover, the visa obligation is lifted. The border area means the area that extends no more than 30 km from the border. This border area can be extended to 50 km if a local administrative district is within 30 to 50 km from the border.

#### IV.3 The Visa Code.

The Commission Proposal for establishing a Community Code on Visas (Visa Code)<sup>10</sup>, as presented to EP and Council in July 2006, aims at incorporating all legal instruments governing decisions on visas and to remedy a whole series of problems in a horizontal way. It seeks to enhance transparency and legal certainty, to reinforce equal treatment of visa applicants and to strengthen procedural guarantees by laying down rules on the mandatory motivation of refusals of visa applications, on the possibility for appeal and on

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<sup>9</sup> OJ L29 of 3.2.2007, p. 3

<sup>10</sup> COM(2006) 403 final2.

the obligation for Member States to provide visa applicants with basic information on the requirements for obtaining a Schengen visa.

The provisions of the Visa Code will apply to every applicant irrespective of his/her nationality. With regard to supporting documents the Visa Code provides for a harmonized form providing for the proof of invitation, sponsorship and accommodation and for a non-exhaustive list of supporting documents for several specific purposes of travelling which can be completed and harmonized within local consular cooperation.

#### IV.4 The Visa Information System (VIS).

On 28 December 2004 the Commission adopted a proposal for a Regulation concerning the Visa Information System (VIS) and the exchange of data between MS on short-stay visas<sup>11</sup>. The purposes of the VIS are, among others, to improve the implementation of the common visa policy by facilitating the visa issuing procedure, to prevent "visa shopping", to facilitate the fight against fraud and to facilitate the checks at external borders and within the territory of the Member State. In parallel, the VIS also serves the bona fide traveller. At the moment information about a visa application is only held by the Member State to whom the visa application was addressed. If a bona fide traveller applies again for a Schengen visa but to the authorities of another Member State, in general, the records of his previous visa applications are not available to the consular authorities of the other Member State. When the VIS is rolled out, consular authorities will have access to previous applications of this bona fide traveller as well which should ease the issuing of the visa to him/her.

#### IV.5 The Common Application Centres and biometrics.

In May 2006 the Commission has presented its proposal for amending the Common Consular Instructions in relation to the introduction of biometrics including provisions on the organization of the reception and processing of visa applications<sup>12</sup>. With the introduction of the VIS fingerprints and photographs as biometric identifiers will be taken from the visa applicant. This proposal creates the legal basis for taking the biometric identifiers. The Commission has proposed that at the moment of submission of his first visa application the visa applicant should provide these biometric identifiers and therefore should appear in person to the consular authority. However, for any subsequent application the biometric identifiers will be copied provided that the last entry is not older than 48 months. In these cases, it would not be necessary, in general, to appear in person when applying for a visa.

The above mentioned proposal also gives the legal framework for the organization of MS' consular offices in view of the implementation of the VIS and the taking of biometric identifiers. In order to avoid Member States having to install the necessary equipment for collecting biometric identifiers in every consular office, the proposal provides for the possibility to create "Common Application Centres" (CAC) (several Member States work

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<sup>11</sup> COM(2004) 835 final

<sup>12</sup> COM(2006) 269 final

together in one building), "co-location" (using the premises and equipment of one Member State) and "outsourcing" (cooperation with external service providers); in addition the proposal introduces the possibility of "limited representation" (representation of one or more Member States solely for the reception of applications and enrolment of biometric identifiers). This proposal also aims to provide better access for visa applicants to embassies and consulates, in the sense that there should be a better consular presence/representation of Member States and a better geographical coverage. The advantages of these new forms of organizing the reception and processing of visa applications are strengthening local consular cooperation, streamlining and cost-saving for Member States and this also benefit visa applicants.

## **V. Actions to be undertaken.**

### **V.1. By the European Parliament and the Council.**

First of all, it should be stated, in general, that it is very important that the EP and the Council work constructively on the **adoption of the Commission proposals** mentioned in point IV as soon as possible, as these proposals will to a large extent contribute to the solutions of the outstanding difficulties:

- The proposal on Common Application Centres and biometrics: providing better access of visa applicants to consulates, better consular presence and better regional coverage;
- The proposal for a Visa Code: harmonization of forms and of supporting documents, strengthening procedural guarantees by laying down rules on the mandatory motivation of refusals of visa applications, on the possibility for appeal and on the obligation for Member States to provide visa applicants with basic information on the requirements for obtaining a Schengen visa.

### **V.2 By the Member States.**

- Consequently, it is for the **Member States to swiftly implement these measures** in particular to ensure a better organization of their consular services in order to be able, in general, to process visa applications as smoothly and timely as possible.
- As the **Local Border Traffic Regulation** has been adopted (see under IV), **Member States may now conclude bilateral agreements** with the neighbouring ENP-country(ies) in order to provide for better people-to-people contacts in the border areas.
- Furthermore, a **better use by Member States, already today, of the existing flexibility under the present Schengen-acquis** (e.g. issuing of multiple-entry visas and asking bona fide travellers for fewer supporting documents) would certainly contribute to solve some of the outstanding difficulties.

## **VI Possible further developments.**

- In February 2003, the Council adopted Conclusions on **flexibility in issuing visas to participants in Euro-Mediterranean meetings**.<sup>13</sup>

In January 2007 the Commission has presented a Commission Staff Working document on the Implementation of these Council Conclusions. In this document the Commission has identified the points for discussion in relation to the improvement of the implementation of these Conclusions.

One of them is to **extend the scope** of these Conclusions to countries participating in the European Neighbourhood Policy (ENP). The extension would mainly concern 3 countries covered by the ENP: Armenia, Azerbaijan and Georgia. As regards Ukraine and Moldova, visa facilitation agreements should enter into force before 1 January 2008.

Furthermore, with regard to internal information and procedures, the following **suggestions** were presented that could also **be extended to ENP countries**:

- i. to set up a list of Institutions and Organisations having their headquarters in Member States and organising events in the framework of ENP dialogue and cooperation;
- ii. to establish a periodic (twice per year) exchange of information on meetings, conferences and other events in which ENP partner participation is expected or required. Within the framework of local consular cooperation meetings, the Commission Delegations could distribute lists of participants as they are known.
- iii. to issue guidelines on procedures and modalities to be followed by Member States consular posts when assessing and issuing visas to persons participating in ENP events.
- iv. invite ENP-partners to cooperate more actively e.g. designating participants in events in sufficient time in order to improve the mobility of senior officials and experts in the future.

- In addition, the following could be considered to **facilitate the process of visa applications**:

- for the Commission to systematically provide a letter of support for those known to be travelling on "EU business". The relevant Commission Delegation could then monitor the progress of such applications and intervene with Member State consulates/embassies where necessary to facilitate the process;
- for Member States to fast-track such applications and, where the applicant has previously respected visa requirements, to more systematically grant multi-entry visas.

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<sup>13</sup> 5784/07 VISA 32 MED 3 COMIX 101; see upra point III.1.

- for Member States to improve consular presence, for example, in relevant cases, through common application centres<sup>14</sup>.
- Most of the meetings in relation to ENP-countries take place at the EC/EU premises in Brussels. In this respect it is important that the Belgian authorities responsible for the reception and processing of visa applications from persons involved in ENP-meetings in Brussels are fully involved in solving the problems presently occurring and can count on full and timely cooperation of the Commission. In order to establish this the Commission will start discussions with the Belgian authorities in order to make sure that the visa applications from persons participating in ENP-meetings in Belgium are in principle processed in such a way that these persons will be able to participate in the ENP-meetings without encountering difficulties.

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<sup>14</sup> See footnote 5 *supra*