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EUROPEAN COMMISSION

Brussels, 11.6.2010  
C(2010)3667 final

**COMMISSION DECISION**

**of 11.6.2010**

**establishing the Handbook for the organisation of visa sections and local Schengen cooperation**

**(Only the Bulgarian, Czech, Dutch, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish texts are authentic)**

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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)<sup>1</sup>, and in particular Article 51 thereof,

Whereas:

- (1) Regulation (EC) No 810/2009 lays down the Union rules for the issuing of visas for transit through, or intended stays in, the territory of Member States not exceeding three months in any six-month period.
- (2) Article 51 of the Visa Code states that operational instructions on the practical application of the provisions of the Regulation should be drawn up with a view to ensuring harmonised implementation of these provisions. A Handbook for the processing of visa applications and the modification of issued visas has been drawn up. It is also appropriate to prepare a 'Handbook for the organisation of visa sections and local Schengen cooperation'. This should contain operational instructions, best practices and recommendations for the central and consular authorities of the Member States responsible for the organisation and functioning of consular services and cooperation between Member States' authorities at central and local level, including the functioning of local Schengen cooperation.
- (3) In order to ensure its optimal use by all relevant Member States' authorities, the Commission should make the Handbook available to Member States in electronic form, as set out in Article 53 (2) of the Visa Code.

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<sup>1</sup> OJ L 243, 15.9.2009, p. 1.

- (4) The Commission will ensure that the Handbook is updated regularly.
- (5) In order to enhance harmonised implementation of Union rules relating to the organisation and functioning of consular services and cooperation between Member States' authorities, Member States should instruct their relevant national authorities to use the annexed Handbook as a guide when organising visa sections and cooperating with other Member States' authorities at central and local level.
- (6) Member States should use the Handbook for the purpose of informing staff affected to consular duties, in particular concerning the tasks and functioning of local Schengen cooperation.
- (7) In accordance with Article 2 of 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 did not take part in the adoption of Regulation (EC) No 810/2009 and is not bound by it, nor subject to its application. However, given that Regulation (EC) No 810/2009 builds upon the Schengen *acquis* pursuant to Title IV of Part Three of the Treaty establishing the European Community, in accordance with Article 4 of that Protocol Denmark notified by letter of 2 February 2010 the transposition of this *acquis* into its national law. It is therefore bound under international law to implement this Decision.
- (8) This Decision 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*<sup>2</sup>. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (9) This Decision 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*<sup>3</sup>; Ireland is therefore not taking part in its adoption and is not subject to its application.
- (10) As regards Iceland and Norway, this Decision 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 latter's association with the implementation, application and development of the Schengen *acquis*<sup>4</sup>, which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement.<sup>5</sup>
- (11) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European

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<sup>2</sup> OJ L 131, 1.6.2000, p. 43.

<sup>3</sup> OJ L 64, 7.3.2002, p. 20.

<sup>4</sup> OJ L 176, 10.7.1999, p. 36.

<sup>5</sup> OJ L 176, 10.7.1999, p. 31.

Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*<sup>6</sup>, which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC<sup>7</sup> read in conjunction with Article 3 of Council Decision 2008/146/EC<sup>8</sup>.

- (12) As regards Liechtenstein, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement signed between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the association 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*, 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 2008/261/EC<sup>9</sup> and Article 3 of Decision 2008/262/EC<sup>10</sup>.
- (13) As regards Cyprus, this Decision constitutes provisions building upon, or otherwise related to, the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession.
- (14) As regards Bulgaria and Romania, this Decision constitutes provisions building on the Schengen *acquis* or otherwise related to it within the meaning of Article 4(2) of the 2005 Act of Accession.
- (15) The measures provided for in this Decision are in accordance with the opinion of the Visa Committee,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The Handbook for the organisation of visa sections and local Schengen cooperation is set out in the Annex to this Decision.

#### *Article 2*

1. Member States shall:

- transmit the Handbook referred to in Article 1 to the authorities competent for the organisation and functioning of visa sections and cooperation between Member States' authorities at central and local level;

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<sup>6</sup> OJ L 53, 27.2.2008, p. 52.

<sup>7</sup> OJ L 176, 10.7.1999, p. 31.

<sup>8</sup> OJ L 53, 27.2.2008, p. 1.

<sup>9</sup> OJ L 83, 26.3.2008, p. 3.

<sup>10</sup> OJ L 83, 26.3.2008, p. 5.

and

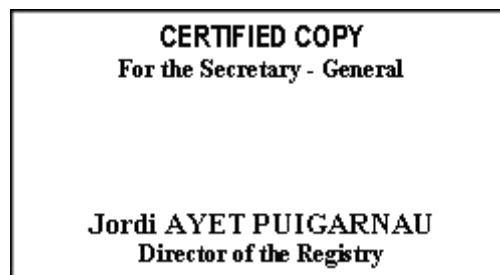
- instruct the above mentioned authorities to use the Handbook as a guide when organising visa sections and cooperating with other Member States' authorities at central and local level.
- 2. Member States shall also use the Handbook for the purpose of informing consular staff to be affected to consular duties, in particular with respect to the tasks and functioning of local Schengen cooperation.

*Article 3*

This Decision is addressed to the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland and the Kingdom of Sweden.

Done at Brussels, 11.6.2010

*For the Commission*  
*Cecilia MALMSTRÖM*  
*Member of the Commission*



**ANNEX**

***HANDBOOK FOR THE ORGANISATION  
OF VISA SECTIONS AND LOCAL SCHENGEN COOPERATION***

## **FOREWORD**

This Handbook contains guidelines for organising visa sections and local Schengen cooperation. It is to be used for the implementation of European Union legislation on the common visa policy by Member States' central and consular authorities in charge of running consular services and ensuring cooperation between Member States' authorities, at central and local level.

This Handbook has been drawn up pursuant to Article 51 of the Visa Code. It does not create any legally binding obligations on Member States, nor does it establish any new rights or obligations for the persons who might be concerned by it. Only those legal acts on which the Handbook is based, or to which it refers, produce legally binding effects and can be invoked before a national jurisdiction.



## **PART I: ORGANISATION AND INFORMATION TO BE GIVEN TO THE PUBLIC**

### **1. Best practices in the organisation of visa sections**

*Legal basis: Visa Code, Articles 13 (6) and 37*

#### **1.1. Division of tasks and protection of staff**

To maintain vigilance levels and protect staff from being exposed to local pressure, rotation schemes shall be set up, where appropriate, for staff dealing directly with applicants. Particular attention shall be paid to well-defined work structures and a clear allocation/division of responsibilities for those taking decisions on applications.

When the collection of biometric identifiers becomes applicable, they shall be collected by qualified and duly authorised staff. Only a limited number of duly authorised staff shall have access to data entry or to consultation of the Visa Information System (VIS), where applicable, consultation of the Schengen Information System (SIS) and other to confidential information. Appropriate measures shall be taken to prevent unauthorised access to such databases.

#### **1.2. Storage and handling of blank visa stickers**

Adequate security measures shall be in place for the storage and handling of visa stickers in order to prevent fraud or loss. Consulates shall keep an account of their stock of visa stickers and record how each visa sticker is used.

**Recommended best practice for the stock keeping and registration of blank visa stickers:** Member States' consulates should keep an electronic account of their stock of blank visa stickers and register electronically the use of each visa sticker.

### **2. Resources for examining applications and monitoring consulates**

*Legal basis: Visa Code, Article 38*

Member States shall have a sufficient number of appropriate staff to carry out tasks relating to the examination of applications, to ensure that the public receives a reasonable and harmonised quality of service, irrespective of how the collection of visa applications is organised. The deployment of resources should take account of seasonal peaks.

Premises shall be functional and adequate and appropriate security measures shall be arranged.

Member States' central authorities shall provide adequate training for both expatriate and locally-employed staff. They are responsible for providing staff with complete, accurate and up-to-date information on the relevant European Union and national legislation.

Member States' central authorities shall make sure that the manner of examining applications is subject to frequent and adequate monitoring. If they detect any deviations from the provisions of the Visa Code, corrective measures should be taken.

### **3. Accreditation of commercial intermediaries**

*Legal basis: Visa Code, Article 45*

Member States may cooperate with commercial intermediaries for the lodging of applications, but not for the collection of biometric identifiers.

Cooperation with commercial intermediaries for the lodging of visa applications is distinct from cooperation with external service providers in the collection of visa applications (see forms of organisation of the collection of visa applications in Part III).

#### **3.1. Procedures for granting accreditation**

Cooperation with a commercial intermediary shall be based on accreditation granted by a Member State's relevant authorities. Accreditation is granted once the following aspects have been verified:

- (a) current status of the commercial intermediary: current licence, commercial register and contracts with banks;
- (b) existing contracts with commercial partners based in the Member States offering accommodation and other package tour services;
- (c) contracts with transport companies, which must include both an outward journey and a guaranteed and fixed return journey.

#### **3.2. Monitoring**

Spot checks shall be carried out regularly on accredited commercial intermediaries by means of personal or telephone interviews with applicants. They should cover trips and accommodation, adequate travel medical insurance in the case of individual travellers and, wherever deemed necessary, verification of the documents relating to group return.

#### **3.3. Withdrawal of accreditation**

Member States' relevant authorities should withdraw accreditation from a commercial intermediary if they consider that the intermediary no longer meets the required conditions.

**Recommended best practice:** Once a year Member States' relevant authorities should evaluate their cooperation with accredited commercial intermediaries and renew/withdraw accreditation accordingly.

### **3.4. Exchange of information**

Within local Schengen cooperation, there shall be an exchange of information on the performance of accredited commercial intermediaries, namely any irregularities detected, any refusals of applications submitted by commercial intermediaries, as well as any document fraud detected or failure to carry out scheduled trips.

Within local Schengen cooperation there shall be an exchange of lists of commercial intermediaries accredited by each consulate from which accreditation has been withdrawn, setting out the reasons for the withdrawal.

### **3.5. Approved Destination Status (ADS)**

On 12 February 2004, the European Community and the National Tourism Administration of the People's Republic of China (CNTA) signed a Memorandum of Understanding (MoU) on visas and related issues in order to facilitate Chinese group tourism to the Member States. The MoU has been implemented since 1 September 2004. Denmark, Iceland, Norway and Switzerland have concluded separate ADS agreements with CNTA.

The MoU contains specific provisions on the accreditation, monitoring and possible sanctioning of travel agencies under the ADS scheme.

On 16 September 2004, the Commission issued a Recommendation on the implementation of the MoU<sup>11</sup>, in which it proposed common implementation procedures for the MoU with respect to accreditation of travel agencies, couriers' identification badges, practical arrangements concerning cooperation with their couriers, as well as the warnings and withdrawals which can be imposed on travel agencies. Pursuant to this Recommendation, the Commission is responsible for establishing and updating the list of couriers and for informing the Chinese authorities of any sanctions imposed on travel agencies.

## **4. General information to be provided to applicants**

### ***Legal basis: Visa Code, Articles 47 and 48***

In addition to informing the general public as to which nationalities and categories of such nationals are subject to visa requirements for entry into the territory of the Member States and/or for transit through the international transit areas of Member States' airports, Member States' central authorities and consulates shall provide the general public with all the relevant information for visa applications.

At local level the information should be harmonised within local Schengen cooperation, by the drafting of a common information sheet on the various types of visa (including, where applicable, a common list of supporting documents, see Part II, point 1.1).

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<sup>11</sup> OJ L 296, 21.9.2004 p. 23.

**4.1. All relevant information on the criteria, conditions and procedures for applying for a visa should be provided, including :**

- the Member State competent for examining and taking a decision on the visa application (as well as information on possible representation of/by another Member State);
- the documents to be submitted when applying for a visa \*);
- where the application should be submitted (at the consulate of the competent Member State or representing Member State, at a common application centre\*);
- if applications are collected by an external service provider, both the Member State's consulate and the external service provider should make information available on the service fee to be paid and the possibility of submitting the application directly at the Member State's consulate;
- the visa fee to be paid when submitting the application, i.e. information on which fees apply to which categories of applicants and on the categories of applicants for which the fee is waived. Information must also be given on the currency in which the fee must be paid and the practical arrangements for the payment of the fee. It should be explicitly indicated that in the event of a refusal, the fee will not be reimbursed;
- when the application should be submitted;
- whether the applicant needs to make an appointment, and if so, how and when an appointment can be obtained \*);
- whether the application can be submitted through an accredited commercial intermediary, e.g. a travel agency;
- the time-limits for examining and taking a decision on a visa application (including information on third countries whose nationals or specific categories of national are subject to prior consultation) \*).

*\*) Including information on the procedural guarantees to be granted to family members of EU/EEA<sup>12</sup> and Swiss citizens.*

**Recommended best practice in providing information to potential visa applicants:**

To avoid the submission of incomplete visa applications and repeated visits to the consulate by applicants, all relevant information should be disseminated as widely as possible. Besides general information about visas, information on how to apply should be available in several languages, and at least in the official language(s) of the host country and that/those of the Member State concerned. This information should be widely available and visibly displayed outside the building or precincts as well as on websites.

**4.2. The following information on the rights and obligations of visa holders should also be provided:**

- the mere possession of a visa does not confer automatic right of entry and the holder of a visa is requested to prove that he fulfils the entry conditions when presenting himself at the external border;
- as from 5 April 2011: negative decisions on applications must be notified to the applicant and such decisions must state the reasons on which they are based. Applicants whose applications are refused have a right to appeal. The information should include details of the procedure to be followed in the event of an appeal, including the competent authority, as well as the time-limit for lodging an appeal).
- the stamp indicating that an application is admissible has no legal implications.

### **4.3. The application form**

#### ***Legal basis: Visa Code, Article 11 (6)***

The following information should be provided :

- that the application form is free of charge;
- where the application form can be obtained;
- the need for each individual applicant to fill in and submit an application form, as well as individual photographs, even if several people are covered by the same travel document;
- the language(s) which may be used when filling in the application form.

#### **Recommended best practice in relation to the application form:**

To prevent illicit trade in application forms, these should be widely available, free of charge, at consular premises and, for instance, at the offices of travel agencies, airlines, business associations, cultural institutes and via the Internet.

Examples of correctly filled-in forms should be on display at consulates (and, where possible, published on the Internet).

#### 4.4. Statement on data protection

*Legal basis: VIS Regulation, Article 37*

*THIS POINT APPLIES ONLY IN CONSULATES WHERE THE VIS HAS BECOME OPERATIONAL:*

4.4.1. Visa applicants and persons issuing an invitation and/or liable to pay the applicant's subsistence costs during the intended stay shall be informed of the following:

- (a) the identity of the controller under Article 2(d) of Directive 95/46/EC, including his contact details;
- (b) the purposes for which the data will be processed within the VIS;
- (c) the categories of recipients of the data, including the relevant authorities referred to in Article 3 of Council Decision 2008/633/JHA,;
- (d) the data retention period;
- (e) that collection of the data is mandatory for the examination of the application;
- (f) their right to access data relating to them, and their right to request that inaccurate data relating to them be corrected or that unlawfully processed data relating to them be deleted, including the right to receive information on the procedures for exercising those rights and the contact details of the National Supervisory Authorities referred to in Articles 2(d) and 41(1) of Directive 95/46/EC which hear claims concerning the protection of personal data.

4.4.2. This information shall be provided in writing to the applicant when the data necessary for the creation of a file upon application are collected.

4.4.3. The information shall be provided to the persons issuing an invitation and/or liable to pay the applicant's subsistence costs during the intended stay on the forms to be signed by those persons providing proof of invitation, sponsorship and accommodation. In the absence of such a form signed by those persons, this information shall be provided in accordance with Article 11 of Directive 95/46/EC.

Recommended best practice for providing information on the National Supervisory Authorities:

This information should be incorporated into the statement on data protection in the visa application form and be made available to the general public via websites and/or bulletin boards.

## **PART II: LOCAL SCHENGEN COOPERATION (LSC)**

*Legal basis: Visa Code, Articles 22 (3), 31 (2) and 48*

The Visa Code lays down the legal framework for the procedures for examining and taking decisions on visa applications. Member States' consulates are responsible for the practical application of these legal provisions. The purpose of this chapter is to provide guidelines for cooperation between Member States at local level with a view to ensuring harmonised application of the Visa Code.

### **1. Assessment of the need to establish a harmonised approach in relation to specific issues.**

#### **1.1. Within LSC, the need for the following will be assessed:**

- a harmonised list of supporting documents;
- a harmonised approach to optional exemptions from the visa fee.

The need for such harmonisation will be established by a majority of Member States' consulates at local level.

#### **1.2. Within LSC, cooperation on the following should be established:**

- translation of the application form into the language(s) of the host country;
- drawing up an exhaustive list of travel documents issued by the host country (including information on the security aspects of such travel documents).

### **2. Exchange of information within LSC**

#### **2.1. Member States' consulates shall seek to harmonise the following**

- visa fee, if it is charged in a currency other than EUR;
- service fees charged by external service providers in the same location, if they provide similar services.

#### **Recommended best practice in relation to the review of the exchange rate:**

The frequency of review of the exchange rate used in the account section of the consulate and any adjustment of the visa fee depend on the stability of the exchange rate of the local currency in relation to the euro. The foreign exchange rate for the euro should be verified at least every two weeks, although shorter intervals may be justified. Member States should agree on a common procedure within local Schengen cooperation.

If the euro foreign exchange reference rate set by the European Central Bank is not available for a local currency, Member States may use the exchange rate applicable in their internal budgetary matters in order to calculate the amount of the visa fee in local currency.

## **2.2. Member States' consulates shall exchange information on the following**

- introduction or withdrawal of requests for prior consultation for nationals of certain third countries or certain categories of such nationals;
- introduction or withdrawal of requests for ex-post information on visas issued to nationals of certain third countries or certain categories of such nationals;
- selection of external service providers;
- accreditation of commercial intermediaries and withdrawal of such accreditation;
- cooperation with transport companies;
- monthly statistics;
- local sources of information.

## **2.3. Exchange of information on insurance companies and assessment of travel medical insurance products on offer**

The verifications described in this point should relate to travel medical insurance offered by insurance companies and not to each individual insurance policy submitted by applicants.

Checks should be carried out to establish whether insurance companies offering travel medical insurance are effectively liable for claims for accidents that have taken place within the Member States, and that the national legislation of the country where the insurance company is based allows for financial transfers to other countries. Mutual insurance agreements with companies based within the territory of the Member States is not necessarily the solution. In some third countries national legislation forbids such mutual insurance. It is thus important to determine whether local insurance companies are effectively in a position to meet financial obligations in other countries, as this is essential for assisting a potential visa holder within the territory of the Member States. Particular care should be taken to verify whether a local correspondent is indicated in the policy.

It is important to verify the weighting of individual risks, because insurance companies frequently specify in the policy the exact amount covered for each risk. Even if the sum of the different risks amounts to 30 000 EUR, the coverage could be misleading. The insurance company might artificially inflate coverage of less expensive risks (administrative expenses, for instance) and, on the contrary, allocate smaller amounts to risks that are likely to be more expensive (hospital treatment and repatriation, for instance). Such policies must be considered to be inadequate.

Consulates should be aware that insurance policies often contain references to significant exclusions or limitations in relation to activities, medical conditions etc., which limit the coverage offered or exclude it entirely. Such policies should also be considered to be inadequate. Adequate warnings should be published on the websites and bulletin boards of consulates, and at the premises of external service providers and honorary consuls.

Travel medical insurance shall cover any expenses which might arise in connection with repatriation for medical reasons, urgent medical attention and/or emergency hospital treatment



or death, only for the duration of the applicant's stay(s) on the territory of the Member States and not throughout the validity of the visa.

**Example:** A third country national applies for a visa for the purpose of a single stay of 14 days, i.e. 14.5 – 28.5. The insurance company should offer adequate travel medical insurance which is valid for 14 days within the period of validity of the visa.

It should be verified that the applicant's insurance actually covers on-the-spot assistance (medical expenses and repatriation etc.), which should be distinguished from reimbursement of expenses made only when the applicant has returned. If the insurance only covers *a posteriori* reimbursement, this could call into question the objective of the requirement, which is to save Member States from having to use public funds to cover the expenses of medical treatment etc. for visa holders. Moreover, such products give visa applicants a false impression of being adequately protected.

Within local Schengen cooperation, there should be a sharing of information on insurance companies which offer adequate travel medical insurance, including verification of the type of cover and any excess amounts.

**Recommended best practice in assessing insurance policies offered:**

In some insurance policies the insured person must cover a certain amount himself, i.e. an 'excess amount'. If this excess amount is very high, the true coverage provided by the insurance is called into question. Although it is not possible to prohibit such practices within the context of legislation on the issue of visas, any insurance companies which follow such practices should be denounced.

**3. Assessment of migratory and/or security risks based on exchange of information on:**

- use of false, counterfeit or forged documents;
- illegal immigration routes;
- refusals/refusal rates (linked to exchange of statistics).

**4. The structure and organisation of Local Schengen Cooperation (LSC)**

*Legal basis, Visa Code, Article 48 (4) — (6)*

**4.1. Meetings**

Local Schengen cooperation meetings shall be organised regularly among Member States' representations and the Union delegation. The meetings shall be convened within the jurisdiction by the EU Delegation, unless otherwise agreed at the Commission's request.

The purpose of the meetings is to deal specifically with operational issues in relation to the application of the common visa policy. Single-topic meetings may be organised and sub-groups set up to study specific issues within Local Schengen Cooperation.

## 4.2. Participants

Invitations to LSC meetings should be sent to representatives of the consulates of the EU Member States and of associated states applying the common visa policy, as well as representatives of the EU Member States which do not yet fully apply the common visa policy.

Representatives of third countries (including the host country) may be invited on an ad hoc basis in the light of their know-how or the information they possess on particular topics that the LSC wishes to examine in relation to visas.

## 4.3. Reports

Summary reports of Local Schengen Cooperation meetings shall be drawn up systematically and circulated locally. The EU Delegation may entrust the drawing up of the reports to a Member State. All consulates of each Member State shall forward the common report to their central authorities.

## 4.4. Procedure after assessing the need for harmonisation of practices

- 4.4.1. In local Schengen cooperation, where the need for harmonisation at local level **has** been established and, in particular, a harmonised list has been drawn up at local level, the EU Delegation shall forward the list to the Visa Committee. The Visa Committee will examine the list, and the harmonised practice will be formally adopted by a Commission Decision subject to a favourable opinion of the Committee.
- 4.4.2. In Local Schengen Cooperation, where the need for harmonisation at local level **has not** been established, this should be mentioned in the common report of meetings referred to in point 4.3. The EU Delegation shall forward the report to the Visa Committee for its assessment.

## **PART III: ORGANISATION OF THE COLLECTION OF VISA APPLICATIONS**

*Legal basis: Visa Code, Articles 40 – 44*

### **Fundamental principles**

The visa requirement is an obligation imposed by the European Union and its Member States on third country nationals. The collection of visa applications should not be organised in such a way that it represents an obstacle in itself.

No matter how a Member State chooses to organise the collection of visa applications, the following principles should be respected:

- all Member States should be present, or represented, for visa purposes in all third countries whose nationals are subject to visa requirements (this is a long term perspective);
  - the collection of visa applications should be organised in such a way that an applicant should only be required to come to one location in order to submit the application ('one stop principle');
  - the reception arrangements for visa applicants should be made with due respect for human dignity;
  - the reception of the applications by an external service provider is a last-resort solution. It should be used only when other forms of organisation or cooperation with other Member States prove to be inappropriate for the Member State concerned ('principle of hierarchy');
  - an applicant should always be entitled to submit his application directly at the consulate, particularly in the case of cooperation with an external service provider ('direct access principle');
- Member States shall inform the Commission of how they (intend to) organise the collection of applications in each consular location. The Commission will publish this information ('transparency principle').

As a result, while observing these basic rules a Member State may choose to organise the collection of visa applications, including the collection of biometric identifiers, either on its consular premises, by cooperating with another Member State(s) or by outsourcing part of its tasks to an external service provider.

#### **1. Hierarchy between different forms of organisation.**

A Member State should either deploy the appropriate human and technical resources to collect visa applications in its consulates or seek to be represented by another Member State for the purpose of examining visa applications. Alternatively, a Member State may cooperate with one or more other Member States in a given location for the purpose of collecting visa applications in the form of limited representation, co-location or a common application centre.

Cooperation with an external service provider for the purpose of collecting applications, including biometric identifiers, can be envisaged only when one of the abovementioned forms of cooperation proves to be inappropriate for the Member State concerned.

Thus, before deciding to outsource the collection of visa applications to an external service provider, a Member State should see whether the different possibilities for cooperation among Member States are appropriate or not (see point 4.1).

Whatever the form chosen, the ‘one stop principle’ should be respected. This implies that the applicant should not be required to appear in person at more than one location to lodge the application (i.e. submission of the application form and supporting documents **requiring personal appearance** in one location and submission of the biometric data in another).

The fact that the applicant may be asked to pay the visa fee in a different location (e.g. a bank) or called for interview during the examination of his application is not considered to be a breach of this principle.

## **2. Cooperation among Member States.**

### ***Legal basis: Visa Code, Articles 8 and 41***

A Member State may agree to represent another Member State for the purpose of:

- examining visa applications and issuing visas, including the collection of visa applications and biometric identifiers; or
- only collecting the visa applications and the biometric identifiers.

Such agreement should be subject to a bilateral arrangement between the two Member States concerned. Article 8 of the Visa Code lists the elements to be included in such arrangements.

Member States may also choose to cooperate in the form of ‘co-location’ or a Common Application Centre (CAC). In both cases, visa application forms and all the relevant data including biometric identifiers are collected and sent to the competent consulate for examination.

As ‘co-location’ takes place at the consulate of a Member State, it automatically benefits from privileges and immunities under the Vienna Convention<sup>12</sup>. Where a CAC is set up at premises not under diplomatic protection, in an entirely new building for example, particular attention shall be paid to data transfer rules (see point 5).

The setting up of a CAC requires one Member State to be responsible for the project, particularly as regards logistics and consular/diplomatic relations with the host country.

## **3. Recourse to Honorary Consuls for the collection of visa applications only**

### ***Legal basis: Visa Code, Article 42***

There are two different situations, depending on the legal status of the honorary consul.

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<sup>12</sup> Full title: The Vienna Convention on Consular Relations of 24 April 1963.

When the honorary consul is a civil servant of a Member State, requirements are applied **comparable** to those which would apply if the tasks were performed by its consulate.

When the honorary consul is not a civil servant of a Member State all the requirements to be met are set out in Annex X to the Visa Code, except for the provisions of point D(c) of that Annex.

#### **4. Cooperation with external service providers**

*Legal basis: Visa Code, Article 43 and Annex X*

This chapter does not concern Member States' cooperation with commercial intermediaries (see Part I, Chapter 3).

The various tasks that may be carried out by an external service provider are listed in Article 43 (6) of the Visa Code. One or more of these tasks may be carried out by the same external service provider.

The external service provider is not entitled to participate in any way in the decision-making process.

##### **4.1. The conditions**

The reception of visa applications may be outsourced on two conditions :

First, there must be particular circumstances or specific reasons relating to the local situation:

***Examples:***

- a large number of applicants leading to unacceptable waiting times, deadlines for collecting the applications or reception conditions;
- no other way of ensuring good territorial coverage of the third country concerned (e.g. the applicants have to travel long distances in large countries or the transport infrastructure is not sufficiently developed);
- security conditions in the third country concerned (e.g. access to the consulates of the Member States is restricted by local authorities).

Second, as outsourcing is a last-resort solution, a Member State must carry out a prior examination of other possible forms of cooperation (see also point 1).

Information relating to the decision to outsource the collection of visa applications or the selection of an external service provider should be exchanged in the framework of Local Schengen Cooperation. This opens up the possibility for one or more Member State(s) to cooperate with the same external service provider.

##### **4.2. Substance of the contract between the Member State and the external service provider**

Cooperation with an external service provider is based on a legal instrument which contains a set of minimum requirements which are listed in Annex X to the Visa Code. Both the Member State and the external service provider must comply with these requirements.

In particular, Member States remain responsible for compliance with data protection rules in accordance with Article 28 of Directive 95/46/EC. To this end the processing and the transferring of the data has to be secure pursuant to Article 44 of the Visa Code (see point 5).

Member States must monitor the external service provider's activity in order to ensure it complies with all the requirements and conditions of the contract, as provided for by Article 43 (11), last paragraph, of the Visa Code.

#### **4.3. The service fee**

##### ***Legal basis: Visa Code, Article 17***

As a fundamental principle, a service fee may be charged to an applicant using the facilities of an external service provider only if the alternative is maintained of direct access to the consulate incurring the payment of just the visa fee (see point 4.4).

This principle applies to all applicants, whatever the tasks being performed by the external service provider, including those applicants benefiting from a visa fee waiver, such as family members of EU and Swiss citizens or categories of persons benefiting from a reduced fee. These include children from the age of 6 years and under 12 years and persons exempted from the fee on the basis of a Visa Facilitation Agreement. Therefore, if one of these applicants decides to use the facilities of an external service provider, the service fee shall be charged.

It is the responsibility of the Member State to ensure that the service fee is proportionate to the costs incurred by the external service provider, that it duly reflects the services offered and that it is adapted to local situation.

In this regard, the amount of the service fee has to be compared with the prices usually paid for similar services in the same country/location. Elements related to local circumstances, such as the cost of living or the accessibility of services are to be taken into account.

In the case of call centres, the local tariff should be charged for the waiting time before the applicant is transferred to an operator. Once the applicant has been transferred to the operator, a service fee shall be charged.

Harmonisation of the service fee is to be addressed in the framework of Local Schengen Cooperation. Within the same country/location there should not be any significant discrepancies in the service fee charged to applicants by different external service providers or by the same service provider working for different Member State consulates.

#### **4.4. Direct access**

Maintaining the possibility for visa applicants to lodge their applications directly at the consulate instead of via an external service provider implies that there should be a genuine choice between these two possibilities.

Even if direct access does not have to be organised under identical or similar conditions to those for access to the service provider, the conditions should not make direct access impossible in practice. Even if it is acceptable to have a different waiting time for obtaining an appointment in the case of direct access, the waiting time should not be so long that it would render direct access impossible in practice.

The different options available for lodging a visa application should be presented plainly to the public, including clear information both on the choice and the cost of the additional services of the external service provider (see Part I, point 4.1).

## **5. Transfer of data**

### ***Legal basis: Visa Code, Article 44***

Whatever the form of organisation chosen by a Member State for the collection of visa applications, secure data processing must be fully ensured.

In particular, in the case of cooperation with other Member States or external service providers, or recourse to honorary consuls, the transmission of the data must be encrypted as prescribed in Article 44 irrespective of the transmission channel used.

No cross-border electronic transfer of data will be allowed in third countries where encrypted data transfer is prohibited.

In such cases, only the physical transfer on an electronic storage medium may be authorised, provided the data is fully encrypted. The transfer must be carried out by a consular officer of a Member State.

Where such a transfer would require disproportionate or unreasonable measures, alternative solutions may be used in order to ensure safe and secure transmission of the data, for example by using private operators experienced in transporting sensitive documents and data in the third country concerned.

In assessing the disproportionate or unreasonable nature of the measures, the following elements should be taken into account: distance to be covered, transportation safety, number of applications concerned, availability of resources and the possible transfer of data by another Member State's consulate.

As regards adapting the security level to the sensitive nature of the data, any data containing the risk of identification of either the applicant or the host and/or revelation of their ethnic background and political or religious views must be considered to be sensitive.