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**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN
PARLIAMENT**

**on the functioning of Local Schengen Cooperation during the first two years of
implementation of the Visa Code**

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I. INTRODUCTION

In its Communication on the Global Approach to Migration and Mobility¹ of 18 November 2011, the Commission emphasised that promoting and facilitating mobility is a strategic element of EU external migration policy. It applies to a wide range of people, e.g. short-term visitors, tourists, students, researchers, business people and visiting family members. Mobility is therefore an important dimension of the EU's Global Approach. Mobility and visa policy are closely inter-linked. Around 12 million short-stay visas were issued by Member States issuing 'Schengen visas' in 2011. Visa policy is a crucial element of any forward-looking policy on mobility.

As part of its response to historical developments in the Southern Mediterranean, the European Commission proposed in its Communication of 24 May 2011 to launch a Dialogue on Migration, Mobility and Security with the Southern Mediterranean countries. This could lead to the establishment of Mobility Partnerships with Egypt, Morocco, Tunisia and Libya. The Council has, in different formations, including the European Council of 24 June 2011, endorsed this approach. The recommendations of this report should also take account of these developments.

This report primarily addresses the implementation of local Schengen cooperation and sets out recommendations for enhancing and improving this cooperation. Additionally, it contains recommendations focusing on certain regional aspects such as consular coverage which links in with some of the priorities proposed in the Global Approach Communication.

II. LOCAL SCHENGEN COOPERATION — GENERAL OBSERVATIONS

Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)² entered into force on 5.10.2009 and became applicable from 5.4.2010. The Visa Code recasts the existing legislation on procedures and conditions for issuing short-stay visas (i.e. visas for short stays not exceeding 90 days in any 180 day period, and airport transit visas). Under Article 51 of the Visa Code, 'instructions on the practical application of the Visa Code' have been drawn up: Commission Decision (2010) 1620 final establishing the Handbook on the processing of visa applications and the modification of issued visas addressed to consular staff processing visa applications was adopted on 19.3.2010³ and Commission Decision (2010)3667 final establishing the Handbook for the organisation of visa sections and local Schengen cooperation, addressed to

¹ COM(2011) 743 final

² OJ L 243, 15.9.2009, p 1.

³ C(2010) 1620 final — amended by C (2011) 5501 final (4.8.2011).

the authorities in charge of organising consular services and those involved in local Schengen cooperation was adopted in June 2010.⁴

The provisions of the Visa Code are applied universally by Member States' consulates⁵. However, given the differences in local circumstances, legislators have acknowledged the need to ensure coherent cooperation among Member States and the Commission at local level so that there is harmonised application of general legal provisions taking local circumstances into account: 'Local Schengen cooperation is crucial for harmonised application of the common visa policy and for proper assessment of migratory and/or security risks. Given 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 harmonised application of the legislative provisions to prevent 'visa shopping' and different treatment of visa applicants' (Recital 18 of the Visa Code).

'Local circumstances' relate to aspects such as documentary proof of, for instance, employment, depending on the administrative and legal organisation of the host country; or the specificities of different categories of applicants in a given third country, e.g. from the point of view of migratory pressure.

Article 48 of the Visa Code sets out the legal framework for local Schengen cooperation (LSC), as well as the division of tasks. These tasks mainly concern the assessment of the need to harmonise lists of supporting documents to be submitted by visa applicants in a given country, common criteria for the implementation of optional visa fee waivers for certain categories of applicants, consistency of information provided to visa applicants and exchange of relevant information among the Member State consulates present in a given location.

LSC is a collective task to be shared among Member States' consulates and the Commission, in principle via EU Delegations. In March 2010, the Commission Services invited all Heads of EU Delegations to designate a contact point from among their members of staff to coordinate LSC.

The role of the Commission is to convene LSC meetings and ensure that consistent reports of meetings are drawn up. The Commission is also in charge of drawing up annual reports within each jurisdiction.

The coordination of LSC is not equally challenging in all locations: it depends, among other things, on the number of Member States present, whether there are consulates issuing visas in locations other than the capital, and whether nationals of the host country require visas.

Attention is also drawn to the fact that in 22 third states,⁶ there are no Member State consulates, meaning that LSC is irrelevant; and in 31 locations there are no EU Delegations, meaning that the Commission has no information on the state of affairs on LSC.

Under the Visa Code (Art. 48(5) second sub-paragraph), an annual report has to be drawn up in each jurisdiction, to be submitted to the European Parliament and the Council. Because of

⁴ C(2010) 3667 final.

⁵ For the sake of simplicity, the term 'consulates' is used throughout this text to cover Member States' diplomatic missions and consular posts.

⁶ 17 of these are third countries whose nationals are subject to the visa requirement and 5 are third countries whose nationals are not subject to the visa requirement.

the essential role of LSC in the harmonised implementation of the common visa policy and experience so far, this report aims to assess the functioning of LSC since the start of application of the Visa Code and to give guidance on improving it, pending evaluations to be submitted by the Commission in 2013 and 2014 as provided for by Article 57 of the Code.

- *Methodology*

Template of the annual report to be provided within each jurisdiction was sent to all EUDs in March 2011 and 2012 respectively, listing the key issues to be covered. The reports were to cover the period April 2010 to March 2011 and April 2011 to March 2012. In 2011, 70 reports have been submitted and by July 2012 71 had been submitted. This left about 50 unsubmitted for each reporting period, for different reasons No LSC contact point has been appointed or the contact point does not actively participate in the LSC (approximately 30 EUDs); cooperation according to the Visa Code does not take place because only one or two Member States are present for issuing visas in the location (27 locations), or because nationals of the host state are not subject to visa requirements and very few visas are issued, and no cooperation among Member States takes place.

III. ASSESSMENT OF THE FUNCTIONING OF LSC

1. Start of application of the new legal framework for LSC

The coordinating role of the Commission for LSC is exercised via the EUD. Once LSC contact points had been designated, they received a basic set of FAQs on the Visa Code, LSC and the tasks to be carried out. LSC contact points have access to the Visa Code Handbooks and other essential information on CIRCA.⁷ The Visa Policy unit of DG HOME provides information on work in relevant bodies in the Commission, the EP and Council as well as serving as a 'helpdesk' giving direct and operational support to EUDs.

Generally, LSC contact points deplore the lack of structured training on the Visa Code in particular and on the common visa policy in general. This should, of course, be addressed in future.

During the reference period, staff from DG HOME have given general presentations for staff to be posted abroad in the framework of seminars organised by DG RELEX, later EEAS.

Moreover, it became apparent from the assessment that Member States' consulates had not been made sufficiently aware of the new legal framework and some claimed that instructions from their central authorities would be required before assessment of the need for harmonisation at local level could be carried out or annual reports drawn up.

2. LSC meetings

Generally, meetings are held every two months, more frequently if required. Meetings are currently either chaired by the EUD or co-chaired by the EUD and the rotating Presidency. Only in a few jurisdictions does a Member State chair on its own if an LSC contact point has

⁷ CIRCA: Communication Information Resource Centre Administrator, a web-based application for the exchange of information.

been appointed,. Such sharing of the tasks or delegation of tasks is provided for in the Visa Code (Art. 48(4)).

Attendance at meetings seems fairly good and the continuity ensured by the involvement of EUDs seems appreciated. Despite the provisions of the Visa Code (i.e. Article 48 (6) and the guidelines set out in the second Handbook, Part II, point 4.2), representatives of Member States not applying the common visa policy are systematically invited to meetings. On the other hand, it is not clear whether the obligation to systematically also invite associated states and the three Member States that do not yet apply the common visa policy is fully respected in all jurisdictions.

Common reports are drawn up, but often lack operational conclusions, meaning that there is no follow up to the issues raised. Most LSC contact points systematically forward the reports to the Commission and work on the assumption that Member States' consulates also forward them to their respective central authorities, as stipulated in the Visa Code (Art. 48 (5)). They are not always forwarded to Member States, which is unfortunate, as this means that they either do not receive information on conclusions drawn or issues raised, or that they receive a version different to that shared locally and with the Commission. Therefore, knowledge of how the Visa Code is actually implemented remains very scattered and complaints from third countries cannot be properly assessed.

3. Concrete operational tasks to be carried out under LSC

3.1. Assessment of the need to harmonise the lists of supporting documents

At this initial stage of the implementation of the Visa Code, work on establishing lists of supporting documents is one of the most important tasks of the LSC and it has the most visible impact on visa applicants and local authorities. However, by July 2012 (i.e. more than 2 years after the start of application of the Code), only five Commission Decisions covering seven LSCs have been adopted (Bosnia-Herzegovina, China, Indonesia, Saudi Arabia, Sri Lanka, Turkey, Vietnam, Egypt, United Kingdom, Chile Kazakhstan, Nicaragua and Nigeria) and work has progressed in another 18 LSCs around the world. There are various reasons for the lack of progress: reluctance on the part of Member States at local level, seemingly unaware of the legal obligation to carry out this assessment; lack of awareness by consulates of certain Member States regarding application of a common visa policy; presence of only one or two Member States, obviously rendering harmonisation less relevant; nationals of the host state not subject to the visa requirement, so harmonisation is considered unnecessary. There is one common denominator for most of the 30 LSCs that have accomplished this task: in these locations, the EUD has invested considerable resources in coordinating the work in close cooperation with Member States' consulates.

3.2. Exchange of information on optional visa fee waivers and assessment of the need for common criteria

According to Article 16 (5), Member States may waive the visa fee for three specific categories of persons.⁸ To ensure harmonised application of the optional visa fee waivers within the same jurisdiction to avoid unequal treatment of applicants and 'visa shopping', the following provision was added (Article 16 (5) last paragraph): *'within local Schengen*

⁸ Children aged 6 -12 years; holders of diplomatic and service passports; participants aged 25 years or less in events organised by non-profit organisations. .

cooperation, Members States shall aim to harmonise the application of these exemptions.’ According to Article 48 (1) ‘To that end LSC will assess the need to establish in particular:’ ... ‘(b) ‘common criteria for examining applications in relation to exemptions from paying the visa fee in accordance with Article 16 (5)’.

This assessment has been carried out in most locations and it is too early to evaluate the extent to which differences in Member States’ application of these provisions may lead to ‘visa shopping’. But even if in a given location Member States’ consulates agree that such harmonisation would be desirable, this cannot be put into practice, as optional visa fee waivers in some Member States are decided at central level. This issue should be addressed in future.

3.3. Exchange of information on the visa fee charged in local currency and assessment of the need for harmonisation

According to Article 16 (7), second paragraph, ‘the amount of the visa fee, when charged in a currency other than euro,...shall be determined and regularly reviewed in application of the euro foreign exchange reference rate set by the European Central Bank (ECB). The amount charged may be rounded up and consulates shall ensure under local Schengen cooperation that they charge similar fees.’

A survey has been carried out in 25 different jurisdictions around the world. Differences of up to 26% have been detected in the visa fee charged in local currency. In some locations, there is evidence that differences in fees charged gives rise to 'visa shopping'. A regular review is particularly difficult, as the consulates of some Member States are not allowed to deviate from exchange rates set centrally for all consular fees to be applied by their embassies abroad.

3.4. Common information sheet

In order to communicate in a harmonised, coherent and transparent manner, the LSC should draw up a common information sheet providing information on the different types of visas, procedures and conditions for applying for such visas, etc.(Art. 48(2)).

In some locations, common information sheets have been drawn up, whereas in others, work is in progress on these. In some locations, the view is that work on these lines is superfluous as Member States already provide the appropriate information.

3.5. Exchange of information

Generally, exchange of information is the core of the agenda of LSC meetings. Issues range from those linked to local circumstances and individual cases of fraud to questions on interpretation of the Visa Code and the exchange of monthly statistics. It is particularly important to examine possible fluctuations in figures, including the number of multiple entry visas issued, and to compare refusal rates.

3.6. Challenges for the LSC in the next reporting period

Of the few reports which referred to challenges ahead, some referred to ongoing work on harmonisation of procedures, whereas others referred to the roll-out of the Visa Information System (VIS).

IV. CONCLUSIONS AND RECOMMENDATIONS

The legal framework for structured LSC, including the Commission's involvement, has not yet delivered its full potential. However, results achieved in a number of key locations have proved LSC's added value in enhancing harmonisation of the way in which the common visa policy is applied. This contributes to the perception applicants and local authorities have of a real policy ensuring equal and fair treatment. Improved Local Schengen Cooperation contributes to strengthening the credibility of the EU common Visa Policy, to making tangible the advantages for third country nationals and in the long run, to reducing pressure for visa facilitation agreements. To improve LSC further, and to ensure that its core tasks are carried out in all locations to their full potential, the below actions and recommendations are proposed. Recognising the limits on resources in Delegations and in line with existing administrative arrangements, the following recommendations will only be implemented in Delegations maintaining the same or increased staff levels than in previous years.

(a) the role of EU Delegations

- During the period 2010-2012 the core tasks of LSC have been carried out by EU Delegations' staff in an increasing number of delegations . LSC will continue with the same workload level of staff in Delegations with focus in priority countries such as ENP countries and the EU's strategic partners. Burden sharing with Member States embassies and consulates in these countries will contribute to a better functioning of LSC.
- an LSC contact point must be designated in priority countries if this has not yet been done,
- the contact point should play an active role in LSC and take the lead in chairing meetings to ensure the continuity and coherence of cooperation taking into account burden sharing with Member States;, e.g. when the EUD does not have sufficient appropriate staff to carry out LSC tasks, should tasks be delegated to a Member State;
- where relevant, coordination with the LSC taking place in locations outside capitals should be improved, possibly by involving a Member States' consulate as local coordinator;
- where relevant, EUD should in cooperation with Member States' consulates assess whether consular coverage in the host state should be enhanced and, if so, explore the most appropriate way of doing so (e.g. by proposing the setting up of common application centres). This will become particularly relevant in view of the progressive roll-out of the Visa Information System (VIS);
- EUD should in cooperation with Member States' diplomatic missions organise information events with the authorities of the host state to present the common visa policy, particularly the regional roll-out of the VIS, so as to prevent or clarify possible misconceptions. EUD should collect information from third country nationals on how the Visa Code is implemented (for example by opening a 'complaint mail box') and report problems or discrepancies in implementation of the Visa Code and the common visa policy, particularly as regards implementation of Visa Facilitation Agreements, with a view to bringing such problems to the attention of the Commission;

- a section of the EUD's website should be dedicated to general information on the common visa policy.
- (b) the role of Member States' central authorities
- Member States' consular staff should be made more aware of the legal obligations concerning 'LSC tasks' provided for by the Visa Code and of the fact that the credibility of the EU is at stake, as many third country nationals form their opinion of the EU through visa issuing procedures;
 - in locations where there is no EUD, a Member State should volunteer to designate its consulate in the location concerned to act as LSC contact point and report directly to the Commission on LSC issues.
- (c) the role of Member States' consulates:
- they should constructively and actively participate in LSC and be ready to share its tasks;
 - they should systematically share common LSC reports with their central authorities;
 - regional training on the Visa Code should be organised for MS consular staff , particularly as regards roll-out of the VIS in the region concerned;
- (d) the Commission in cooperation with EEAS:
- should strengthen the capacity of EUD and LSC contact points, with particular attention to regions with a heavy workload, to carry out LSC tasks by:
 - (a) organising focused training/information sessions both centrally and regionally (in cooperation with EEAS), on the application of the Visa Code (and Handbooks) and implementation of the VIS;
 - (b) enhancing networking among LSC contact points, possibly by organising an annual seminar where general briefs and updates can be given on EU Home Affairs and related policies;
 - (c) improving the basic 'information kit' to LSC contact points, including a template for a 'common information sheet' to ensure coherent communication on the common visa policy;
 - (d) revising the Handbook for the organisation of visa sections and local Schengen cooperation, Part II, to clarify implementation of the Visa Code as regards LSC tasks.

V. FINAL REMARKS

The EU is often perceived negatively by third countries because of its arcane and untransparent visa issuing procedures. For many people, their first contact with 'Europe' is with a Member State's consulate when applying for a visa. It is therefore very important to apply the Visa Code correctly so that the process improves, offering visa applicants

transparent, fair and equal treatment. LSC is the main tool to guarantee consistent implementation of the Visa Code, taking into consideration local circumstances.

The core tasks to be carried out under the Visa Code are fairly specific and operational, and it is essential in the short term to accomplish these, particularly as regards harmonising the list of supporting documents. Better cooperation between Member States and the Commission and burden sharing within LSC will contribute to building trust in the process. .

Implementing the LSC provisions properly and applying the flexibilities provided for in the Visa Code will improve the image of the common visa policy, and the relationship with the authorities of the countries concerned will gain from this.