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ANNEX

ANNEX

*to the*

**Commission Implementing Decision**

**amending Commission Decision No C(2010) 1620 final of 19 March 2010 establishing the Handbook for the processing of visa applications and the modification of issued visas**

## ANNEX

The Annex to Commission Decision No C(2010) 1620 establishing the Handbook for the processing of visa applications and the modification of issued visas is replaced by the following:

## ***FOREWORD***

The objective of this Handbook, for the practical application of the Visa Code is to lay down operational instructions (guidelines, best practices and recommendations) for the performance of tasks of Member States' consular staff and staff of other authorities responsible for examining and taking decisions on visa applications, as well as tasks of staff of the authorities responsible for modifying issued visas.

The Handbook and its operational instructions take into account the Visa Code<sup>1</sup> and all other European Union legislation relevant for the implementation by consular staff and staff of other authorities responsible for examining and taking decisions on visa applications of the European Union's common visa policy, which regulates the issuance of visas for transit through or intended stays in the territory of the Member States not exceeding 90 days in any 180 days period. The list of the legal instruments relevant for this Handbook is set out in [Part VI](#).

The Handbook is drawn up on the basis of Article 51 of the Visa Code. It neither creates any legally binding obligations upon Member States nor establishes any new rights and obligations for the persons who might be concerned by it, but aims to ensure a harmonised application of the legal provisions. Only the legal acts on which the Handbook is based, or refers to, produce legally binding effects and can be invoked before a national jurisdiction.

Fundamental rights enshrined in the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union must be guaranteed to any person applying for a visa. The processing of visa applications should be conducted in a professional and respectful manner and fully comply with the prohibition of inhuman and degrading treatments and the prohibition of discrimination enshrined, respectively, in Articles 3 and 14 of the European Convention on Human Rights and in Articles 4 and 21 of the Charter of Fundamental Rights of the European Union.

In particular, consular staff must, in the performance of their duties, fully respect human dignity and must not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Any measures taken in the performance of their duties must be proportionate to the objectives pursued by such measures.

Consular staff should seek to strike a balance between the need, on the one hand, always to be vigilant in order to detect persons posing a risk to public policy and internal security as well as potential illegal immigrants, and the need, on the other hand, to ensure the smooth handling of visa applications submitted by persons who fulfil the entry conditions. It is impossible in a Handbook to set up operational instructions providing clear guidance in each and every individual case that might occur. In such cases where no clear guidance is given, consular staff shall process visa applications in full compliance with the spirit of the common visa policy.

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<sup>1</sup> Regulation (EC) No 810/2009 of 13.7.2009 of the European Parliament and of the Council establishing a Community Code on Visas (Visa Code), OJ L 243, 15.9.2009, page 1.

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## **PART I: GENERAL ISSUES**

### **1. EU MEMBER STATES AND ASSOCIATED STATES, HAVING ABOLISHED BORDER CONTROLS AT THEIR INTERNAL BORDERS AND FULLY IMPLEMENTING THE SCHENGEN *ACQUIS* IN RELATION TO THE ISSUING OF VISAS FOR THE PURPOSE OF STAYS NOT EXCEEDING 90 DAYS**

#### **1.1 EU Member States**

Austria	Latvia
Belgium	Lithuania
Czechia	Luxembourg
Denmark	Malta
Estonia	The Netherlands
Finland	Poland
France	Portugal
Germany	Slovakia
Greece	Slovenia
Hungary	Spain
Italy	Sweden

As regards France and the Netherlands, the common visa policy applies only to the European territories of those Member States. As regards Denmark, it does not apply to Greenland and the Faroe Islands.

#### **1.2 Associated countries**

EEA countries<sup>2</sup> (Norway, Iceland, Liechtenstein) and Switzerland. As regards Norway, the common visa policy does not apply to Svalbard (Spitzbergen).

#### **1.3 EU Member States not yet applying the Schengen *acquis* in full**

Bulgaria, Cyprus, Croatia and Romania.

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<sup>2</sup> The Agreement on the European Economic Area.

Bulgaria, Croatia, Cyprus and Romania do not yet implement the Schengen *acquis* in full. This means that the Visa Code is binding upon them but that until the Schengen *acquis* is fully implemented these four Member States issue national short-stay visas that are valid only for their own territories. Bulgaria, Croatia, Cyprus and Romania fully apply Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of a visa when crossing the external borders and those whose nationals are exempt from that requirement.

## 2. TERMINOLOGY

For the purpose of the Visa Code and this handbook the term ‘Member State’ refers to those EU Member States applying the Schengen *acquis* in full and the associated states. ‘Territory of the Member States’ refers to the territory (see points 1.1 and 1.2) of these ‘Member States’.

## 3. VISA REQUIREMENTS

### UNIFORM VISAS

#### 3.1 Which nationalities are subject to a visa requirement?

*Legal basis: Regulation (EC) No 539/2001*

The list of third countries whose nationals must hold a visa for entering into the territory of the Member States for stays not exceeding 90 days in any 180-day period is set out in Regulation (EU) 2018/1806 (see [Annex 5](#))<sup>3</sup>.

##### 3.1.1 For which categories of persons are there EU law derogations from the visa requirement for the territory of all Member States?

- Third-country nationals holding a residence permit issued by a Member State are not exempt as such from the visa requirement but their residence permit is considered as being equivalent to a uniform visa. See [List of residence permits issued by Member States \(Annex 2\)](#);
- Holders of diplomatic (and, occasionally, service) passports who under the Visa Facilitation Agreements or specific visa waiver agreements with certain third countries are exempt from the visa requirement;
- Third-country nationals holding a ‘local border traffic permit’ when exercising their rights within the context of the local border traffic regime<sup>4</sup> ([Annex 3](#));
- School pupils who are nationals of third countries whose nationals are subject to visa requirements and who reside in an EU Member State and are travelling in the context of a school excursion as a member of a group of school pupils accompanied by a teacher from the school in question. See [List of school pupils travelling in the framework of a school excursion within the European Union \(Annex 4\)](#);

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<sup>3</sup> All references to annexes concern annexes to the Visa Code Handbook.

<sup>4</sup> OJ L 405, 30.12.2006 and OJ L 29, 3.2.2007.

- Recognised refugees and stateless persons and other persons who do not hold the nationality of any country who reside in a Member State and are holders of a travel document issued by that Member State;
- Certain categories of family members of EU and Swiss citizens are exempt from visa requirements (see [Part III](#)).

### **3.1.2 For which categories of persons are there national derogations from the visa requirement?**

In accordance with Regulation (EU) No 2018/1806, Member States have individually decided to exempt certain categories of nationals of third countries normally subject to visa requirements:

- holders of diplomatic, service/official and special passports;
- civilian air and sea crew members in the performance of their duties;
- civilian sea crew members, when they go ashore, who hold a seafarer's identity document issued in accordance with International Labour Organisation Conventions No 108 of 13 May 1958 or No 185 of 16 June or the International Maritime Organisation Convention on Facilitation of International Maritime Traffic of 9 April 1965;
- crew and members of emergency or rescue missions in the event of a disaster or accident, and civilian sea crew members navigating in international inland waters;
- holders of travel documents issued by intergovernmental international organisations of which at least one Member State is member, or by entities recognised by the Member State concerned as subjects of international law, to officials of those organisations or entities;
- members of the armed forces travelling on NATO or Partnership for Peace business;
- holders of identification and movement orders provided for by the Agreement of 19 June 1951 between the parties to the NATO regarding the status of their forces;
- school pupils who are nationals of a third country whose nationals are subject to visa requirements who reside in a third country whose nationals are not subject to visa requirements and are travelling in the context of a school excursion as a member of a group of school pupils accompanied by a teacher from the school in question;
- recognised refugees and stateless persons residing in and holding a travel document issued by a third country whose nationals are not subject to visa requirements;
- without prejudice to the requirements stemming from the European Agreement on the Abolition of Visas for Refugees signed at Strasbourg on 20 April 1959, recognised refugees and stateless persons and other persons who do not hold the nationality of any country who reside in the United Kingdom or in Ireland and are holders of a travel document issued by the United Kingdom or Ireland, which is recognised by the Member State concerned.

Information on all such exemptions is published in the [Information pursuant to Regulation \(EU\) 2018/1806](#) (see [Annex 5](#)).

### **3.1.3 Turkish nationals who are service providers may be exempt from the visa requirement**

See [Guidelines on the movement of Turkish nationals across the external borders of EU Member States in order to provide services there \(Annex 6\)](#).

### **3.2 Which nationalities are exempt from the visa requirement?**

The list of third countries whose nationals are exempt from the obligation to hold a visa for entering into the territory of Member States for stays not exceeding 90 days in any 180-day period is set out Regulation (EU) 2018/1806 (see [Annex 1](#)).

#### **3.2.1 For which categories of persons are there national derogations from the short-stay visa waiver?**

In accordance with Regulation (EU) 2018/1806, some Member States have unilaterally decided to impose visa requirements on certain categories of nationals of the third countries normally not subject to a visa requirement:

- holders of diplomatic, service/official and special passports;
- civilian air and sea crew members;
- flight crew and attendants on emergency or rescue flights and other helpers in the event of a disaster or accident;
- civilian sea crew including crew of ships navigating in international waters and on international inland waterways;
- holders of laissez-passer issued by some intergovernmental international organisations to their officials;
- persons wishing to carry out paid activities during a stay of less than 3 months.

Information on these exemptions is published in the Information pursuant to Council Regulation (EU) 2018/1806 ([Annex 5](#)).

The exception to the exemption from the visa requirement in Article 6(3) of Regulation (EU) 2018/1806 ('persons travelling for the purpose of carrying out a paid activity') should be interpreted narrowly. In particular, it should not concern persons employed or exercising an independent activity in their country of residence who have to travel for professional purposes. In that sense, and in accordance with the Visa Waiver Agreements concluded by the EU with certain third countries, this exception should not cover:

- business persons, i.e. persons travelling for business purposes (without being employed in the Member State of destination);
- sports persons and artists performing an activity on an ad hoc basis;
- journalists sent by the media of their country of residence; and

- intra-corporate trainees.

## AIRPORT TRANSIT VISAS

### *Legal basis: Visa Code, Article 3*

### **3.3 Which nationalities are subject to an airport transit visa requirement?**

The list of third countries whose nationals must hold an airport transit visa when passing through the international transit areas of airports situated on the territory of the Member States is set out in [Annex 7A](#).

A Member State may unilaterally decide to require nationals from certain third countries to hold an airport transit visa when passing through the international transit areas of airports situated on its territory (see [Annex 7B](#)).

#### **3.3.1 Which categories of persons are exempted from the airport transit visa requirement?**

The following categories of persons are exempt from the obligation to hold an airport transit visa:

- a) holders of a valid uniform visa, national long stay visa or residence permit issued by a Member State;
- b) holders of a valid visa issued by
  - Bulgaria, Croatia, Cyprus, Romania, Ireland or the United Kingdom;
  - Canada, Japan or the United States of America;

including when they return from those countries after having used the visa.

The return trip should take place at the latest immediately after the expiry of the visa issued by one of the listed countries and not several days later.

The exemption of holders of valid visas issued by Bulgaria, Croatia, Cyprus, Romania, Ireland, the United Kingdom, Canada, Japan or the United States of America applies irrespective of whether the person concerned travels to the country that issued the visa or to another third country.

The exemptions for holders of valid visas, as referred to in the previous paragraph, relate to visas issued for the purpose of stay and transit through the international transit areas of airports situated on the territory of the countries concerned.

**Example:** A Nigerian national holding a valid Canadian visa is travelling from Lagos (Nigeria) via Frankfurt (Germany) to Bogotá (Colombia).

This person does not need to hold an airport transit visa when transiting through the international transit area of Frankfurt airport.

However, if a third-country national holding an expired visa issued by Bulgaria, Croatia, Cyprus, Romania, the United Kingdom, Ireland, Canada, Japan or the United States of America returns from a third country other than the issuing country, he or she is not exempted from the airport transit visa requirement:

**Example:** A Nigerian national holding an expired Canadian visa is returning from Bogotá (Colombia) to Lagos (Nigeria) via Frankfurt (Germany).

This person needs to hold an airport transit visa when transiting through the international transit area of Frankfurt airport.

- c) holders of a valid residence permit
  - issued by Ireland or the United Kingdom;
  - issued by Andorra, Canada, Japan, San Marino or the United States of America guaranteeing the holder's unconditional readmission (see [Annex 7C](#));
- d) family members of EU citizens covered by Directive 2004/38/EC, irrespective of whether they are travelling alone, to accompany or join the EU citizen (see [Part III](#));
- e) holders of diplomatic passports;
- f) flight crew members who are nationals of a contracting party to the Chicago Convention on International Civil Aviation.

#### 4. THE TYPES OF VISAS COVERED BY THE VISA CODE AND THE VISA CODE HANDBOOK

The Visa Code 'establishes the procedures and conditions for issuing visas for transit through or intended stays in the territory of the Member States not exceeding 90 days in any 180-day period' (i.e. 'short stays') and 'establishes the procedures and conditions for issuing visas for the purpose of transit through the international transit areas of Member States' airports.' The visas issued may be uniform visas, meaning that they allow the holder to circulate in the entire territory of the Member States or visas with limited territorial validity, meaning that the holder is only allowed to circulate in the territory of one/some Member State(s), or airport transit visas allowing the holder to transit through the international transit area of a Member State's airport(s).

## 5. THE UNIFORM FORMAT FOR THE VISA STICKER

Uniform visas, visas with limited territorial validity, and airport transit visas issued by Member States are printed in the uniform format for the visa sticker as established by Council Regulation (EC) 1683/95 laying down a uniform format for visas.

## 6. VISA FACILITATION AGREEMENTS

Visa facilitation agreements (VFAs) between the European Union and certain third countries provide measures to facilitate procedures for issuing visas to nationals of specific third countries (e.g. reduction of the visa fee, issuance of multiple-entry visas for specific categories of applicants, shorter processing times) without altering the conditions for issuing visas (i.e. the visa applicant must still satisfy the entry conditions).

Twelve VFAs are currently in force<sup>5</sup>. However, those concerning third countries that are no longer under the short stay visa requirement are essentially redundant. The joint committees monitoring these VFAs have drawn up specific implementing guidelines for each agreement. The VFAs are binding on all EU Member States except Denmark, the United Kingdom and Ireland. The Schengen associated states are not covered by the VFAs.

Denmark, Iceland, Liechtenstein, Norway and Switzerland have concluded bilateral agreements with a number of the third states concerned.

<i>Third country</i>	<i>Entry into force of EU agreement</i>	<i>Entry into force of bilateral agreement Denmark</i>	<i>Entry into force of bilateral agreement Norway</i>	<i>Entry into force of bilateral agreement Switzerland</i>	<i>Entry into force of bilateral agreement Iceland</i>	<i>Entry into force of bilateral agreement Liechtenstein</i>
<b>Russian Federation</b>	1.6.2007	1.10.2009	1.12.2008	1.2.2011	1.3.2010	1.4.2015
<b>Ukraine</b>	1.1.2008	1.3.2009	1.9.2011			
<b>Ukraine amended</b>	1.7.2013	1.1.2016				
<b>North Macedonia<sup>6</sup></b>	1.1.2008		1.2.2009			

<sup>5</sup> *March 2019*

<sup>6</sup> In accordance with Regulation (EC) No 1244/2009 amending Regulation (EC) No 539/2001, nationals of the former Yugoslav Republic of Macedonia holding biometric passports are exempt from the visa obligation (OJ L 336, 18.12.2009, p. 1).

<b>Serbia<sup>7</sup></b>	1.1.2008	1.5.2009	1.6.2010	1.7.2010		
<b>Montenegro<sup>8</sup></b>	1.1.2008	1.8.2008	16.12.2009			
<b>Bosnia and Herzegovina<sup>9</sup></b>	1.1.2008	1.4.2009	1.5.2009	1.7.2009		
<b>Albania<sup>10</sup></b>	1.1.2008	1.12.2008	1.5.2009		1.1.2010	
<b>Republic of Moldova</b>	1.1.2008	1.9.2011	1.12.2011	1.2.2011		
<b>Republic of Moldova amended</b>	1.7.2013					
<b>Georgia</b>	1.3.2011			1.1.2014		
<b>Armenia</b>	1.1.2014			1.8.2016		
<b>Azerbaijan</b>	1.9.2014		1.6.2015	1.4.2017		
<b>Cape Verde</b>	1.12.2014					

## 7. FAMILY MEMBERS OF EU/EEA CITIZENS AND OF SWISS CITIZENS

Under Article 21 of the Treaty on the Functioning of the European Union, every EU citizen has the right to move and reside freely within the territory of the EU Member States, subject to the limitations and conditions laid down in the Treaty and by the measures adopted to give it effect. These limitations and conditions are set out in Directive 2004/38/EC on the rights of citizens of the Union and their family members to move freely within the territory of the (EU) Member States. This handbook contains a specific chapter ([Part III](#)) covering the particular rules applying to visa applicants who are family members of EU/EEA citizens covered by the

<sup>7</sup> In accordance with Regulation (EC) No 1244/2009 amending Regulation (EC) No 539/2001, nationals of Serbia holding biometric passports (excluding holders of passports issued by the Serbian Coordination Directorate [in Serbian: *Koordinaciona uprava*]) are exempt from the visa obligation (OJ L 336, 18.12.2009, p. 1).

<sup>8</sup> In accordance with Regulation (EC) No 1244/2009 amending Regulation (EC) No 539/2001, nationals of Montenegro holding biometric passports are exempt from the visa obligation (OJ L 336, 18.12.2009, p. 1).

<sup>9</sup> In accordance with Regulation (EU) 1091/2010 amending Regulation (EC) No 539/2001, nationals of Bosnia and Herzegovina holding biometric passports are exempt from the visa obligation (OJ L 329, 14.12.2010, p. 1); the VFA continues to apply to holders of non-biometric passports.

<sup>10</sup> In accordance with Regulation (EU) 1091/2010 amending Regulation (EC) No 539/2001, nationals of Albania holding biometric passports are exempt from the visa obligation (OJ L 329, 14.12.2010, p. 1).

Directive and family members of Swiss citizens covered by the EC-Switzerland Agreement on Free Movement of Persons.

#### **8. OTHER DOCUMENTS THAT ALLOW ENTRY INTO AND/OR STAY IN THE TERRITORY OF THE MEMBER STATES AND THAT ARE NOT COVERED BY THE VISA CODE AND THE HANDBOOK**

– national long stay visas

The procedures and conditions for issuing national long stay visas (for intended stays of more than 90 days) are covered by national legislation, although holders of a national long stay visa have the right to circulate within the territory of the Member States in accordance with Regulation (EC) No 265/2010 of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EU) No 2016/399 (the Schengen Borders Code).

– residence permits

The procedures and conditions for issuing residence permits are covered by national legislation, although according to the principle of equivalence between short stay visas and residence permits, holders of a residence permit issued by a Member State and holders of a valid travel document may circulate for up to 90 days in any 180-day period within the territories of the Member States.

– facilitated transit documents (FTD) and facilitated railway transit documents (FRTD)

On 1 July 2003, a specific travel regime for transit between the Kaliningrad region and mainland Russia entered into force. It introduced two types of documents – a facilitated transit document (FTD) and a facilitated railway transit document (FRTD) – needed for crossing the territory of the Member States in order to enable and facilitate the travel of third-country nationals between two parts of their own country which are not geographically contiguous. At present, only Lithuania applies this regime. The FTD serves for multiple direct journeys by any kind of transport by land through the territory of Lithuania. It is issued by Lithuanian authorities and is valid for a maximum period of up to three years. Journeys based on an FTD cannot exceed 24 hours.

The FRTD serves for one return trip by train and is valid for up to three months. Journeys based on an FRTD cannot exceed six hours.

FTD/FRTDs have the same value as a visa and must be issued in a uniform format by consular authorities in accordance with Council Regulation (EC) No 693/2003 and Council Regulation (EC) No 694/2003. FTD/FRTDs cannot be issued at the border.

Subject to the specific rules set out in Regulation (EC) No 693/2003, the provisions of the Schengen *acquis* relating to visas shall also apply to the FTD/FRTD (Article 10 of Regulation (EC) No 693/2003).

[Council Regulation \(EC\) No 693/2003 establishing a specific Facilitated Transit Document \(FTD\), a Facilitated Rail Transit Document \(FRTD\) and amending the Common Consular Instructions and the Common Manual](#)

[Council Regulation \(EC\) No 694/2003 on uniform formats for FTD and FRTD.](#)

## **PART II: OPERATIONAL INSTRUCTIONS ON THE PROCESSING OF VISA APPLICATIONS**

### **1. DETERMINATION OF THE COMPETENT MEMBER STATE AND OF THE COMPETENT CONSULATE OF THAT MEMBER STATE**

How to establish the competent Member State based on the applicant's travel destination

*Legal basis: Visa Code, Article 5*

#### **1.1 Application for a uniform visa for a single entry**

1.1.1 If the travel destination is one Member State, that Member State's consulate must deal with the application.

1.1.2 If the travel destination includes more than one Member State, the application must be dealt with by the consulate of the main destination. The main destination is understood to be the destination where the applicant intends to spend the longest time or where the main purpose of the intended journey is carried out.

*Example: A Moroccan national wishes to travel to France for a family visit (20 days) and has additionally organised a meeting with a business partner in Belgium (two days). He will arrive at and leave from Amsterdam (Netherlands).*

The main purpose of the trip is the family event, and thus the French consulate should deal with the application.

*Example: A Moroccan national wishes to travel to Belgium for business reasons (6 days) and intends to visit relatives in France on the same occasion (6 days). He will arrive at and leave from Amsterdam (Netherlands).*

The duration of intended stays in Belgium or France are identical and thus either the French or the Belgian consulate should deal with the application. Each of them constitutes a main destination; the Member State of first entry should not become responsible for dealing with the application.

#### **1.1.3 If no main destination can be determined, the consulate of the Member State whose external border the applicant intends to cross first must deal with the application**

*Example: A Belarussian national is travelling by bus to Poland, Germany and Austria for the purpose of tourism. She will spend four days in Poland, four days in Germany and three days in Austria.*

The Polish consulate should deal with the application, as the visa holder crosses the external border into Poland.

## 1.2 Application for a uniform visa for multiple entries

**Recommended best practice** for determining the Member State competent for dealing with an application for a uniform visa for multiple entries:

Generally an application for a multiple-entry visa should be dealt with by the Member State that constitutes the usual main destination; i.e. the Member State of the most frequent destination or in the case of absence of such a destination, the Member State of the first envisaged trip.

***Example:** A Senegalese national regularly visits her family in France but also travels to other Member States for business purposes once or twice per year. The destination of her first journey is Switzerland.*

The French consulate should deal with the application because it will be the most frequent destination.

***Example:** An Azeri national working as a lorry driver for an Azeri transport company regularly delivers goods to customers in Austria and has therefore been issued several multiple-entry visas by Austria. The previous visa has expired and he applies for a new visa at the Austrian consulate even though the company will now only deliver goods in Spain.*

The applicant should be referred to the Spanish consulate even if he is well known at the Austrian consulate because his main destination will from now on be Spain.

**Recommended best practice:** In case an applicant is to travel to several Member States on different trips within a short timeframe, consulates should apply a flexible approach and consider this as one trip for the application of Article 5(1) of the Visa Code to avoid unnecessary burden and costs for the visa applicant.

***Example:** An Indian student residing in London (United Kingdom) wishes to travel to Denmark (15-18 August (4 days)) and to Spain 3-12 September (10 days)).*

The Spanish consulate should deal with the application and the visa issued should cover entries into and stays in the two Member States.

### **1.3 Visa application from a person holding a valid short stay visa**

In principle, a person cannot hold two valid short stay visas covering the same period.

If an applicant holds a valid visa but which does not cover the next intended stay entirely, the currently valid visa should not be revoked, but the period of validity of the next visa should start on the day following the expiry of the currently valid one. This should apply irrespective of whether the first visa was issued by another Member State or for another travel purpose.

In exceptional cases, a consulate can deviate from the above principle in circumstances such as those described in the following examples:

**Example:** *An applicant has a visa with a validity from 1 April to 30 April with an authorised length of stay of 15 days. The holder has done a trip at the beginning of April and needs to travel again on 25 April for 10 days.*

*Scenario 1:* The applicant has ‘used’ all 15 days during the first trip or the first visa was a single-entry visa. This means that the first visa is no longer valid after the first trip and the consulate should issue a new visa with a validity starting on 25 April.

*Scenario 2:* The applicant has only ‘used’ 12 days during the first trip and 3 days of stay still remain on his multiple-entry visa. To allow the person concerned to travel on the 25 April it would not be sufficient to issue a visa with a validity starting on 1 May as mentioned above (i.e. “the validity of the new visa to start on the day following the expiry of the current visa”), the current visa should be revoked and a new visa should be issued. The Member State processing the application can revoke a visa issued by another Member State, see [Part V, point 3.4](#).

### **1.4 Application for a uniform visa for the purpose of transit**

**1.4.1 If the transit concerns one Member State, that Member State's consulate must deal with the application.**

**1.4.2 If the transit concerns several Member States, the consulate of the Member State whose external border the applicant intends to cross first must deal with the application.**

**Example:** *A Moroccan national wishing to travel to the United Kingdom via Spain and France.*

The Spanish consulate must deal with the application, because the person concerned will cross the external border into Spain.

**Example:** *A Turkish national wishes to travel from Ankara (Turkey) to London (United*

*Kingdom) by plane via-Vienna (Austria) and Frankfurt (Germany) and after his stay in the United Kingdom he wishes to return to Turkey following another route, via Berlin (Germany) and Budapest (Hungary).*

The Austrian consulate must deal with the application, because the person concerned will first cross the external border into Austria.

**Recommended best practice for seafarers:** It is not always possible to determine in which Member State a seafarer will start his transit because the shipping companies who employ them often do not know in advance on which ship going to which Member State a seafarer is to embark. It is therefore recommended that Article 5 (2) (b) of the Visa Code be applied in a flexible manner in case of seafarers known for their integrity and reliability (i.e. correct use of previously issued visas): the consulate of either of the Member States where the transit could possibly start should deal with the visa application.

### **1.5 Application for an airport transit visa**

1.5.1 If the application only concerns a single airport transit, the consulate of the Member State on whose territory the airport concerned is situated, must deal with the application.

**Example:** *A Nigerian national transits via Frankfurt airport (Germany) on her way to Brazil.*

The German consulate must deal with the application.

1.5.2 If the application concerns several airport transits, the consulate of the Member State on whose territory the first transit airport is situated, must deal with the application.

**Example:** *A Pakistani national transits via Madrid airport (Spain) on his way to Colombia and via Frankfurt airport (Germany) on his return trip.*

The Spanish consulate should deal with the application.

It is important to distinguish a situation of onward journey where the third country national does not leave the international transit area of an airport from situations of onward journey where the third country national leaves the international transit area of an airport, see examples in [point 8.5](#).

1.6 How to deal with an application from an applicant travelling to several Member States, including to a Member State exempting him from visa requirements

**Example:** *A holder of an Indian diplomatic passport is travelling to Germany (four days), Denmark (two days), Hungary (one day), and Austria (one day). Germany, Denmark and Hungary exempt holders of Indian diplomatic passports from the visa requirement, whereas Austria does not.*

The Austrian consulate should deal with the application, Austria being the only Member State submitting the person concerned to a visa requirement, even if Germany is the main destination.

**Example:** *A holder of a Pakistani service passport is travelling to Denmark (seven days), Poland (one day), Austria (two days) and Italy (one day). Austria and Denmark exempt holders of Pakistani service passports from the visa requirement, whereas Italy and Poland do not.*

The Polish consulate should deal with the application, Poland being the Member State of first entry of those Member States submitting the person concerned to a visa requirement, even if Denmark is the main destination.

**Example:** *A holder of an Egyptian service passport is travelling from Egypt to Vienna (Austria) via Munich (Germany). She travels from Cairo to Munich by plane and then from Munich to Vienna by train. Austria exempts holders of Egyptian service passports from the visa requirement.*

The German consulate should deal with the application, Germany being the Member State submitting the person concerned to a visa requirement.

**Example:** *A holder of a Kenyan diplomatic passport is travelling to Germany (two days) and Malta (three days) on official duties with a stop-over in Italy (one day to await a connecting flight). Germany and Malta exempt holders of Kenyan diplomatic passports from visa requirements, whereas Italy does not.*

The Italian consulate should deal with the application, being the only Member State of destination submitting the person concerned to the visa requirement, even if the stay in Italy is only a 'stop over'.

**1.7 Should a Member State consulate accept an application from an applicant travelling to a Member State that is not present or represented in the third country where the applicant resides?**

***Legal basis: Visa Code, Article 5(4)***

One of the underlying principles of the Visa Code is that all Member States should – as a long term perspective - be present or represented for the purposes of issuing visas in all third countries whose nationals are subject to a visa requirement. To that end, Article 5 (4) states that "*Member States shall cooperate to prevent a situation in which an application cannot be examined and decided on because the Member State that is competent in accordance with [Article 5 (1) – (3)] is neither present nor represented in the third country where the applicant lodges the application in accordance with [the provisions on the consular territorial competence]*".

This does not imply that any Member State consulate in the third country where the applicant resides should accept his application if the competent Member State (e.g. the one of the sole or main destination of the applicant) is not present or represented there, because the rules on competence prevail, see points [1.1–1.5](#).

Article 5 (4) entails an obligation for Member States to cooperate in order to prevent such situations of Member States not being present or represented - as a long term perspective - and thus, this obligation is an obligation of means, not an obligation of result. Therefore, Member States are not obliged to accept visa applications that they are not competent to examine and take decisions on according to the rules set out above where the competent Member State is not present or represented.

However, considering that this provision is contained in the article concerning the "*Member State competent for examining and deciding on an application*", a Member State may, in the absence of the normally competent Member State, agree to examine such applications in individual, exceptional circumstances and take a decision on it

- for humanitarian reasons, and
- after having obtained the agreement of the normally responsible Member State.

**1.8 How to react in case an application has been lodged at a consulate that is not competent to deal with it?**

***Legal basis: Visa Code, Article 18 (2)***

If the consulate establishes that it is not competent to deal with an application after the application has been lodged, this information shall immediately be communicated to the applicant, and the entire application (application form and supporting documents) should be returned as well as the visa fee. The applicant shall be informed of where to submit the application.

If required by national legislation (for instance by Ombudsman law), a Member State may keep a copy of the documents submitted and of the communication to the applicant.

### **1.9 Can a consulate accept an application from an applicant not residing in the jurisdiction of the consulate?**

*Legal basis: Visa Code, Article 6*

As a general rule, only applications from persons who reside legally in the jurisdiction of the competent consulate (as described in points [1.1-1.5](#)) should be accepted.

However, an application may be accepted from a person legally present – but not residing - in the jurisdiction of the consulate where the application is submitted, if he can justify why the application could not be lodged at a consulate in his place of residence. It is for the consulate to appreciate whether the justification presented by the applicant is acceptable.

‘Non-residing applicant’ means an applicant who resides elsewhere but is legally present within the jurisdiction of the consulate where he submits the application.

‘Legally present’ means that the applicant is entitled to stay temporarily in the jurisdiction on the basis of the legislation of the third country where he is present either for a short stay or when he is allowed to stay for a longer period of time while maintaining his permanent residence in another third country.

**Example:** *A Bolivian artist is scheduled to perform in Portugal on 25.5 and, from 20.2 to 15.5 she is performing in Canada and the United States.*

A Portuguese consulate in Canada or the United States should allow the applicant to submit the application, because it would be impossible for her to apply while still in her country of residence given the rule of not applying for a visa earlier than three months before the date of the intended entry into the territory of the Member States.

**Example:** *A Chinese professor has travelled to London to teach at a university summer school. During her stay, her father, who lives in France, falls seriously ill and in order to travel to France the Chinese woman applies for a visa at the French consulate in London.*

The French consulate in London should deal with the application because it would be excessive to require the person concerned to return to her country of residence to apply for the visa.

**Example:** *A Moroccan national who spends his holidays in Montreal (Canada) wishes to apply for a visa to travel to Germany at the German consulate in Montreal. He claims that the*

*waiting time for obtaining an appointment for submitting the application at the German consulate in Rabat (Morocco) is too long.*

The German consulate in Montreal should not accept to deal with the application, because the justification is unfounded.

**Example:** *An accredited commercial intermediary lodges the applications of a group of Russian tourists at the Spanish Consulate General in Moscow. All of them will travel together to Spain for two weeks. The majority of them reside in the jurisdiction of the Spanish Consulate in Moscow while some others reside in the jurisdiction of the Spanish Consulate in Saint Petersburg.*

The Spanish consulate in Moscow should deal with the applications.

**Example:** *A Russian national from Novorossiysk (Russia) has travelled to Moscow (Russia) for a trade fair. There he meets a Greek business person who invites him to come to Athens (Greece) straight away in order to establish a contract for a future business relationship. The Russian national wishes to apply for a visa at the Greek consulate in Moscow because the approximate travel/road distance between Moscow and Novorossiysk is around 1500 km.*

The Greek consulate in Moscow should deal with the application because it would be excessive to require the person concerned to return to his city of residence to apply for the visa.

#### **1.10 Can a Member State consulate situated in the territory of another Member State examine an application for a visa?**

**Legal basis:** *Visa Code, Article 7*

Generally, an applicant legally present in the territory of a Member State holds a document allowing him to circulate freely (a uniform visa, a residence permit, a national long-stay visa). However, situations may arise where a person legally present does not hold a document allowing him to travel to another Member State. Under such circumstances the general rules on competence as described in points 1.1 – 1.5 remain applicable.

**Example:** *A holder of an Indonesian diplomatic passport, exempted from the visa requirement by Austria, has travelled to Austria to participate in a conference. During his stay, his authorities order him urgently to travel to Estonia to participate in a high level political meeting. Estonia does not exempt holders of Indonesian diplomatic passports from the visa obligation.*

The Estonian consulate in Vienna should deal with the application because it would be excessive to require the person concerned to return to his country of residence to apply for the visa.

## 2. LODGING OF AN APPLICATION

### 2.1 When can an application be lodged?

**Legal basis:** *Visa Code, Article 9(1)*

A visa application should in principle be lodged at least 15 calendar days before the intended visit (as this is the normal processing time) and cannot be lodged earlier than three months before the start of the intended visit. It is the applicant's responsibility to take the necessary precautions to respect the deadlines where an appointment system is in place. However, applicants should be informed of the various deadlines, *see the Handbook for the organisation of visa sections and local Schengen cooperation, Part I, point 4*.

An application lodged less than 15 calendar days before the intended departure may be accepted, but the applicant should be informed that the processing time may be of up to 15 calendar days. If, nevertheless the applicant insists on lodging the application he should be informed that the final decision might be taken after the intended date of departure.

**Example:** *A Turkish national decides to book a special last minute offer for a skiing vacation in Austria with a departure within two days and only the day before departure he realises that he needs a visa to enter Austria.*

The Austrian consulate could refuse to deal with the application.

A holder of a multiple-entry visa may apply for a new visa before the expiry of the validity of the visa currently held. However, the validity of the new visa must complement the current visa, i.e. a person cannot hold two uniform visas valid for the same period in time.

**Example:** *A Moroccan lawyer representing a gender equality NGO who frequently participates in meetings in various Member States holds a multiple-entry-visa which expires on 31.5. She applies for a new visa on 15.4.*

If a new visa is issued, it should be valid from 1.6. and in such a case the visa holder would be entitled to enter the territory of the Member States on the basis of the first visa that will expire during the stay and leave on the basis of the new visa.

### 2.2 Appointment system

**Legal basis:** *Visa Code, Article 9(2) and (3)*

2.2.1 Should applicants be required to obtain an appointment for submitting an application?

Applicants may be required to obtain an appointment before submitting an application – either via an in-house system or an appointment system run by an external service provider.

In justified cases of urgency, an appointment should be given immediately or direct access for submitting the application should be allowed.

Cases of urgency are situations where the visa could not have been applied earlier for reasons that could not have been foreseen by the applicant.

**Example** of justified case of urgency:

*A close relative (residing in a Member State) of a visa applicant has been injured in a car accident and needs assistance from the visa applicant.*

[For the procedural safeguards in relation to family members of an EU and Swiss citizen, see Part III.](#)

### **2.2.2 What is the maximum deadline for obtaining an appointment?**

**Legal basis:** *Visa Code, Article 9(2)*

The deadlines for obtaining an appointment shall as a rule not exceed two weeks. The capacity of Member States' consulates to handle visa applications should be adapted so that this deadline is complied with even during peak seasons.

### **2.2.3 Can "fast track" procedures for the submission of applications be established?**

A consulate may decide to establish a "fast track" procedure for the submission of applications in order to receive certain categories of applicants.

[For the procedural safeguards in relation to family members of an EU or Swiss citizen, see Part III.](#)

## **2.3 Lodging the application in person**

**Legal basis:** *Visa Code, Articles 10, 13, 21 (8), 42, 43 and 45*

### **2.3.1 Should the applicant appear in person for submitting the application?**

Applicants should as a general rule submit the application in person. Where an external service provider or an honorary consul have been authorised to collect visa applications on behalf of a Member State, applicants must appear in person at their premises. This should be distinguished from the possible interview during the examination as referred to in point 6.12.

Applicants must also appear in person when fingerprints are to be collected (see [chapter 5](#)). The objective of the requirement to submit in person is to allow consular staff to gain an

impression of the substance of the application and ask questions about the purpose of travel and the documents submitted. It is important to obtain ample information from the applicant upon submission of the application irrespective of the practical circumstances in which the application and the supporting documents are collected, in order to determine the competence of the Member State and the purpose of the journey.

Applicants may not be required to systematically fill in forms, check-lists or questionnaires in addition to the application form.

[For the procedural safeguards in relation to family members of an EU and Swiss citizen, see Part III.](#)

### **2.3.2 What are the exemptions from lodging the application in person?**

For persons who are known to the consulate for their integrity and reliability, the requirement of lodging the application in person may be waived by allowing them to have their application submitted by a third party or sent by post. Such exemption cannot be granted to first time applicants and the integrity and reliability must be determined for the applicant individually and revised regularly.

Examples of categories of persons for whom the ‘lodging in person’ requirement may be waived:

- official entities or companies already known to the consulate. However, the reliability of a company does not automatically guarantee the reliability of its employees which must be assessed individually;
- persons having used previous visas correctly;
- persons travelling regularly/frequently (e.g. conferences, seminars, teaching, business contacts);
- persons who need to travel to receive urgent medical treatment and who, for medical reasons, cannot come to the consulate.

**Recommended best practice:** If the consulate receives an application by proxy or by post from a person for whom the requirement of appearing in person has not been waived in advance, the consulate as a rule, should decide not to accept it. The consulate should return the documents to the proxy without assessing the admissibility.

### **2.3.3 What procedure should be followed when applications are lodged through a commercial intermediary?**

Accredited commercial intermediaries may also be allowed to submit applications on behalf of individuals either directly at the consulate or at the premises of an external service provider

or a honorary consul. However, fingerprints cannot be collected by commercial intermediaries, see [chapter 4](#).

#### **2.3.4 What procedure should be followed when biometric identifiers are collected?**

Irrespective of the general rules in relation to appear in person when submitting the application, fingerprints must be collected from first time applicants and persons who have not had their fingerprints collected within the previous 59 months (see [chapter 4](#)).

#### **2.3.5 Interview of an applicant**

Irrespective of where the application has been lodged (i.e. at the consulate or at the premises of an external service provider) and whether the application has been lodged by the applicant in person or not, he may in justified cases, be called for an interview at the consulate (see [point 6.12](#)).

### 3. BASIC ELEMENTS OF THE VISA APPLICATION

In order for an application to be considered admissible, the following must be fulfilled:

- a filled in and signed application form, a valid travel document and a photograph must be submitted;
- the visa fee must have been paid;
- where applicable, biometric data must be collected.

#### 3.1 Travel document

*Legal basis: Visa Code, Article 12*

##### 3.1.1 What is the minimum duration of validity of travel documents that can be accepted?

The travel document presented must be valid at least three months after the intended date of departure from the Member States in case a single-entry visa is applied for.

If a multiple-entry visa is applied for, the travel document must be valid three months after the last intended date of departure.

***Example:** After having been involved in research projects in the Netherlands and Germany, a Indonesian scientist starts working in research projects in Hungary and has to travel there approximately every three months between January 2020 and January 2024. He applies for a multiple-entry visa on 1 November 2019, presenting a travel document that is valid until 15 March 2022. Although the person concerned can be considered "bona fide" – after having used his previous uniform visas correctly – and could be granted a multiple-entry visa valid for the entire period, he should only be issued a multiple-entry visa valid until 15.12.2021.*

The travel document must contain sufficient, and at least two, blank pages (one to affix the visa sticker and one to affix the stamp of the border control authorities).

In principle a person should travel with a valid visa affixed in a valid travel document. However, when all the blank pages of the Schengen visa holder's travel document have been used for affixing visas or entry/exit stamps, he may travel on the basis of the "full" but invalidated travel document containing the valid visa, and a new travel document.

In order to prevent possible difficulties, notably at the moment where border checks are carried out, the person may apply either for a new visa to cover the remaining period of validity of the existing visa or for a new multiple entry visa.

**Recommended best practice in relation to persons holding a valid visa in a travel document which does not contain enough blank pages for entry and exit stamps:** if due to frequent travelling a third country national holding a still valid visa in a 'full' but

invalidated travel document applies for a new visa for the remaining period of validity to be affixed in a new travel document, the valid visa shall be revoked and a new visa with a validity corresponding to the remaining period of validity of the first visa be issued as quickly as possible and without charging the visa fee.

In justified cases of urgency, a travel document that has a shorter period of validity than indicated above may be accepted. Justified cases of urgency are situations (need to travel) which could not have been foreseen by the applicant and who could therefore not in time have obtained a travel document with required validity.

*Example of a justified case of urgency that could allow for disregard of the rule on validity of the travel document: A Philippine national urgently needs to travel to Spain where a relative has been victim of a serious accident. His travel document is only valid 1 month beyond the intended return.*

The Spanish consulate should accept the travel document for the purpose of submitting the application.

### **3.1.2 How to treat travel documents issued more than 10 years prior to the visa application**

*Legal basis: Visa Code, Articles 12 c) and 19 (4)*

Travel documents issued more than 10 years prior to the visa application should in principle not be accepted and applications based on such travel documents not be considered admissible. However, exceptions may be made on humanitarian grounds or for reasons of national interest.

If, eventually a positive decision is taken on the application, a visa with limited territorial validity allowing the holder only to travel to the issuing Member State should be issued (see Point 8.1.2.1).

[For the procedural safeguards in relation to family members of an EU or Swiss citizen, see Part III.](#)

### **3.1.3 How should a travel document that is not recognised by one or some Member State(s) be treated?**

*Legal basis: Visa Code, Articles 25 (3), (4) and 29 (5)*

It should be verified whether the travel document is recognised by the Member State receiving the visa application and by the other Member States. Travel documents not

recognised by all Member States may be accepted but particular rules apply in relation to the type of visa to be issued. Member States' (non)recognition of travel documents is set out in the Table of Travel documents entitling the holder to cross the external borders and which may be endorsed with a visa, Parts I-II-III and V ([Annex 10](#))

In case one or some Member States do not recognise a travel document, a visa whose territorial validity does not cover the territory of that/those Member States may be issued, see [point 8.5.3](#).

In case the Member State receiving the visa application does not recognise the applicant's travel document, a visa may be issued but has to be affixed on the [separate sheet for affixing a visa](#), see [point 8.5.3](#) and [point 10.2.1](#), and its validity shall be limited to the territory of the issuing Member State.

If a travel document is not recognised by any Member State, the application may be declared inadmissible (see [point 3.6](#)).

### **3.1.4. How to treat forged travel documents**

*Legal basis: Visa Code Article 19 (4)*

If an applicant presents a forged travel document and the forgery is detected at the moment of the submission of the application, the application should be considered admissible and the visa be refused.

If an applicant presents a forged travel document and the forgery is detected when the consulate establishes whether the application is admissible or not, the application should be declared admissible, and the visa be refused.

In both cases the travel document should be handled according to the recommended best practice set out in [point 6.4](#).

### **3.2 Application form**

*Legal basis: Visa Code, Article 11 and Annex I, VIS Regulation, Article 37(1) and (2)*

The [uniform application form](#) ([Annex 9](#)) shall be used for the application for visas for stays not exceeding 90 days per 180-day period. The uniform form cannot be altered and additional fields (or pages) may not be added, but the application form may be presented in electronic form or be printed on several pages. Applicants or categories of applicants travelling for a specific purpose may not be required to systematically fill in forms, check-lists or questionnaires in addition to the application form.

Each applicant must submit a filled in and signed application form (in both fields...). If several persons (minors or a spouse) are covered by the same travel document, individual

application forms must be filled in and signed by the persons concerned and in the case of minors, signed by the parental authority or the legal guardian.

Family members of EU and Swiss citizens (spouse, child or dependent ascendant) should not fill in the fields marked by \* while exercising their right to free movement, see [Part III](#), but fill in fields 34 and 35.

Member States should make sure that visa applicants (data subjects) are provided with the relevant information under the General Data Protection Regulation<sup>11</sup>.

### **3.2.1 In which languages should the application form be available?**

*Legal basis: Visa Code, Article 11(3)*

The application form shall be available either in:

- (a) the official language(s) of the Member State for which a visa is requested,
- (b) the official language(s) of the host country,
- (c) the official language(s) of the host country and the official language(s) of the Member State for which a visa is requested, or
- (d) in case of representation, the official language(s) of the representing Member State.

In addition to the language(s) referred to in point (a) (b) and (c), the form may be made available in another official language of the EU institutions, for example in English.

### **3.2.2 What language should be used for filling in the form?**

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

Member States decide which language(s) should be used for filling in the application form and inform the applicants about this.

**Recommended best practice in relation to information on the completing the application form:** It is recommended to make samples of completed application forms (including in electronic format) widely available to facilitate this part of the application process for applicants and ensure that all relevant fields are filled in (e.g. it is important to indicate whether a single or a multiple entry visa is being applied for). If need be, the completed ‘sample’ application may be adapted to local circumstances (for example, field 11 on national identity number: if this is not relevant in a given location, it should be mentioned in the ‘sample’).

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<sup>11</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, page 1.

### **3.2.3 What are the implications of the statement in the application form to be signed by the applicant?**

It is important to verify that the applicant or his legal representative has signed the statement at the bottom of the application form as a proof that he is aware of and consent to the statement. In the case of minors, the person(s) exercising the parental authority or the legal guardian must sign.

### **3.3 The photograph**

*Legal basis: Visa Code, Article 10 (3) (c)*

Consulates should only require and collect one photograph from the applicant.

#### **3.3.1 What are the technical standards for the photograph?**

The photograph to be submitted by applicants must fulfil the standards set out in the photograph specifications ([Annex 11](#)).

Photos that do not comply with these standards should not be accepted.

### **3.4 The Visa fee**

*Legal basis: Visa Code, Article 16*

#### **3.4.1 Does the same visa fee apply to all applicants?**

As a general rule a fee of 60 EUR, applies to individual applicants irrespective of the type of visa applied for and irrespective of where the application is lodged (directly at the consulate by the applicant himself or by a commercial intermediary, via an external service provider or at the external borders). There are, however, general exemptions or reductions of this fee, covered either by the Visa Code, by visa facilitation agreements, or by the particular rules covering family members of EU and Swiss citizens, see [Part III](#). The visa fees set in visa facilitation agreements also apply when nationals of the third countries concerned apply for a visa at the external borders.

Member States may waive or reduce the fee in individual cases and for certain other categories of applicants while aiming at harmonising such exemptions within local Schengen cooperation.

Except for the situations covered by certain Visa Facilitation Agreements, it is not possible to apply or accept an increased "fast track fee" if an accelerated handling of an application is requested.

#### **3.4.2 Mandatory fee waivers or fee reductions applicable to all applicants or certain categories of applicants:**

**Legal basis: Visa Code, Article 16 (4)**

Visa fee rates	General rules	Visa Facilitation Agreements
0 EUR	Children 0-6 years (i.e. children that are 6 years of age minus 1 day) (1)	See <a href="#">Annex 8</a>
	Family members of EU and Swiss citizens (see <a href="#">Part III</a> )	
	School pupils, students, post-graduate students and accompanying teachers who undertake stays for the purpose of study or educational training	
	Researchers from third countries travelling for the purpose of carrying out scientific research (2)	
	Representatives of non-profit organisations aged 25 years or less participating in seminars, conferences, sports, cultural or educational events organised by non-profit organisations (3)	
35 EUR	Children 6-12 (until the age of 12 years minus one day) (1)	See <a href="#">Annex 8</a>
70 (or 35) EUR		See <a href="#">Annex 8</a>

- (1) The calculation should be based on the date of submission of the application.
- (2) Scientific research as defined in Recommendation No 2005/761/EC of the European Parliament and of the Council of 28 September 2005 to facilitate the issue by the Member States of uniform short-stay visas for researchers from third countries

travelling within the Community for the purpose of carrying out scientific research, [Annex 12](#).

- (3) In this context a ‘non-profit’ organisation means an organisation officially registered as a non-profit organisation.

### **3.4.3 Optional visa fee waiver applicable to certain categories of applicants and in individual cases**

*Legal basis: Visa Code, Article 16 (5)*

#### **3.4.3.1 Member States may decide to waive the visa fee for the following categories of persons**

0 EUR	Children 6-12 i.e. children that are 12 years of age minus 1 day) (1)
	Holders of diplomatic and service passports
	Participants aged 25 years or less participating in seminars, conferences, sports, cultural or educational events organised by non-profit organisations (2)

- (1) The calculation should be based on the date of submission of the application.
- (2) In this context a ‘non-profit’ organisation means an organisation officially registered as a non-profit organisation.

Member States should make sure that external service providers are correctly informed about fee waivers, so as to provide correct information to the public and avoid the need for later reimbursement.

#### **3.4.3.2 Waiving or reduction of the visa fee in individual cases**

*Legal basis: Visa Code, Article 16 (6)*

Member States may decide to waive or reduce the visa fee in individual cases on the basis of particular interests in order to promote cultural or sporting interests as well as interests in the field of foreign policy, development policy and other areas of vital public interest or for humanitarian reasons.

#### **3.4.4 The calculation of the fee, if not charged in euro**

*Legal basis: Visa Code, Article 16 (7)*

The visa fee shall be charged in euro, in the national currency of the third country or in the currency usually used in the third country where the application is lodged.

When charged in a currency other than euro, the amount of the visa fee charged in that currency shall be determined and regularly reviewed in application of the euro foreign exchange reference rate set by the European Central Bank. The amount charged may be rounded up and consulates shall ensure under local Schengen cooperation that they charge similar fees.

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

The frequency of the review of the exchange rate used in the account section of the consulate and possible adjustment of the visa fee depends on the stability of the exchange rate of the local currency towards the euro, and the euro foreign exchange rate 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.

In case 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 the local currency.

### **3.4.5 When and how should the visa fee be paid?**

*Legal basis: Visa Code, Article 19 (1)*

Payment of the visa fee is part of the criteria to be fulfilled for an application to be considered admissible, therefore the visa fee should be paid in cash or have been paid in a bank when the application is lodged.

#### **3.4.5.1 Issuance of a receipt**

*Legal basis: Visa Code, Article 16 (8)*

If the visa fee is paid at the same time as the submission of the application, a receipt shall be given to the applicant. If the fee is paid via a bank, the bank receipt is sufficient.

In case applications are lodged by a commercial intermediary on behalf of a group, a collective receipt may be issued.

### **3.4.6 Is the visa fee refundable?**

Generally the visa fee is not refundable irrespective of the final decision on the visa application. However, if the consulate realises that it is not competent for handling the application after the fee has been paid, or if it the application turns out to be inadmissible, the fee must be reimbursed.

### **3.5 Admissibility**

*Legal basis: Visa Code, Articles 10 and 19*

The admissibility of an application can only be verified by the competent consulate irrespective of where the application has been lodged. In case it turns out that an application is inadmissible, the procedure described in [point 3.5.1](#) should be followed.

#### **3.5.1 When is an application admissible?**

Where the deadlines for submission of an application have been respected (see [point 2.1.](#)) and the basic elements for an application to be considered admissible have been submitted (filled in and signed application form, valid travel document, a photograph) and the visa fee has been paid and, if applicable, biometric data has been collected, the application shall be considered admissible.

#### **3.5.2 How should an admissible application be treated?**

If the application is admissible, the application file should be created in the VIS without delay following receipt of the application at the consulate and the further examination should be carried out. When creating the file in the VIS, it is of utmost importance to pay attention to data quality.

#### **3.6 How should an inadmissible application be treated?**

If the application is inadmissible, the application form and any documents submitted should be returned to the applicant and the visa fee should be reimbursed, and the application shall not be further examined.

If required by national legislation (for instance by Ombudsman law), a Member State may keep a copy of the documents submitted and of the communication to the applicant.

If the application is inadmissible, the application form and any documents submitted should be returned to the applicant, the collected biometric data should be destroyed, the visa fee should be reimbursed, and the application shall not be further examined, and no application file should be created in the VIS.

#### **3.7 Can an inadmissible application be examined in certain cases?**

An application that does not fulfil the criteria for being considered admissible may nevertheless exceptionally be examined on humanitarian grounds or for reasons of national interest.

**Example** of a humanitarian ground that could allow for disregard of the rule on admissibility:

*A Philippine national urgently needs to travel to Spain where a relative has been victim of a serious accident. His travel document is only valid for one month beyond the intended date of return.*

**Examples** of reasons of national interest that could allow for disregard of the rule on admissibility:

*The director of one of the most important Bolivian tourist companies has a meeting in Madrid with representatives of the Ministry of Industry, Trade and Tourism but her passport is only valid for one month beyond the intended date of return.*

*A Nigerian business person urgently needs to travel to the Netherlands for business reasons: a contract between a Nigerian multinational and a Dutch multinational in which the Dutch government has a major interest needs to be negotiated. His travel document is only valid for one month beyond the intended date of return.*

### **3.8 What information should be given to the applicant when the application has been lodged about the data stored in the VIS?**

**Legal basis:** *VIS Regulation, Article 37 (1) and (2)*

Member States should inform applicants about the national authority responsible for processing the data stored in the VIS and the national data protection supervisory authority. This should be indicated in the application form

#### **4. BIOMETRIC IDENTIFIERS**

The collection and registration of applicants' biometric identifiers in the Visa Information System (VIS) is compulsory.

##### **4.1 What biometric identifiers should be collected?**

The following biometric identifiers should be collected:

- a digital photo, see [Annex 11](#)
- all ten fingerprints taken flat and collected digitally.

Fingerprints should be collected in accordance with Commission Decision 2009/756/EC laying down specifications for the resolution and use of fingerprints for biometric identification and verification in the VIS. If the fingerprints taken do not match the applicable technical quality standards, the fingerprints must be taken again after cleaning of fingers and equipment. The fingerprints with the best quality value should be uploaded to the VIS. It shall be ensured that appropriate procedures guaranteeing the dignity of the applicant are in place in the event of there being difficulties in enrolling the biometric data.

##### **4.2 At which stage of the application procedure should biometric identifiers be collected?**

*Legal basis: Visa Code, Article 10 (3) (d) and Article 13*

Biometric identifiers should be collected when the application is lodged, irrespective of the way in which the collection of applications is organised.

A first-time applicant must have his photograph taken or scanned and his fingerprints collected when the application is submitted. For the sake of speeding up the lodging of the application, consulates/ESPs shall not compromise the quality of the fingerprints.

All applicants should have a photograph scanned or taken each time an application is submitted.

Persons whose fingerprints have been collected within the previous 59 months should not have the fingerprints collected again, irrespective of how the collection of the application is organised. The fingerprints already stored in the VIS should be copied. The applicant must indicate on the application form when he last had his fingerprints taken.

The external service provider (which does not have access to the VIS) should be instructed to rely on the applicant's statement in field 27 of the application form. If the applicant has not filled in the field and does not remember, the external service provider may recommend that fingerprints be collected again and inform the applicant that in the event that fingerprints have not been registered, he will be called to the external service provider or the consulate again.

In the event of data quality issues in a certain location, the external service provider should (1) inform applicants whose fingerprints have been collected that they are not obliged to give

fingerprints again, and (2) to inform that in the event that fingerprints cannot be copied for technical reasons, he might be called to the external service provider or the consulate again. To prevent that, applicants may be given the possibility of providing fingerprints again.

If, when creating the application file in the VIS, the consulate establishes that the applicant's fingerprints are not stored in the VIS, the applicant shall be called to have his fingerprints collected.

**Example:** *A person applies for a visa for the first time on 9.2.20XX. On 25.6.20XX+4 (52 months after the first application) he applies for a new visa: his fingerprints are copied from the previous application. On 15.9.20XX+5 (67 months after the first application) he applies for a visa again: his fingerprints are collected.*

If there is reasonable doubt regarding the identity of the applicant, he may be requested to give fingerprints within the period of 59 months:

**Example:** *An applicant claims to have had his fingerprints collected within the previous 59 months but the photograph that he submits is very different from the photograph in the submitted travel document.*

*Under such circumstances the applicant can be called to have his fingerprints collected again.*

The applicant may also request that his fingerprints are collected, if he does not remember whether his fingerprints have been collected within the previous 59 months.

#### **4.3 Which applicants are exempted from giving fingerprints?**

**Legal basis:** *Visa Code, Article 13(7)*

The following categories of persons are exempted from giving fingerprints:

- children under the age of 12 years (i.e. children that are 12 years of age minus 1 day old);
- persons for whom fingerprinting is physically impossible;
  - If such physical impossibility is of a temporary nature, the applicant shall be required to provide explanation for such impossibility and may be required to provide medical certification for such impossibility.
  - If fingerprinting of fewer than ten fingers is possible, then the maximum number of fingerprints should be collected;

- Applicants who, for reasons of temporary impossibility, have given fewer than ten fingerprints or none at all, shall be considered as first time applicants for the purpose of the next visa application, and all fingerprints shall be collected.
- Heads of State or government and members of a national government with accompanying spouses, and the members of their official delegation when they are invited by Member States' governments or by international organisations for an official purpose;
- Sovereigns and other senior members of a royal family, when they are invited by Member States' governments or by international organisations for an official purpose.

## 5. SUPPORTING DOCUMENTS AND TRAVEL MEDICAL INSURANCE

### *Legal basis: Visa Code, Article 14 and Annex II*

The purpose of the supporting documents is to allow the relevant authorities to assess whether the applicant fulfils the entry conditions and to assess the possible risk of illegal immigration and/or security risks.

On the basis of the content of this chapter Member States' consulates in any given location shall assess the need to complete and harmonise the list of supporting documents in order to take account of local circumstances. The harmonised lists should be approved by the Visa Committee in accordance with the procedure described in the *Handbook for the organisation of visa sections and local Schengen cooperation, Part II, point 4.4*. Implementing decisions establishing harmonised lists of supporting documents are legally binding on Member States.

The number and type of supporting documents should be adapted to

- the purpose of the intended journey;
- the length and destination of the intended journey;
- local circumstances.

As regards the specific rules applying to the documentary evidence of the purpose of travelling for categories of persons covered by Visa Facilitation Agreements, see the respective Guidelines set out in [Annex 8](#).

[For the procedural safeguards in relation to family members of an EU or Swiss citizen, see Part III.](#)

### **5.1 Supporting documents**

#### **5.1.1 Should original documents, electronic scans or photocopies be required?**

In principle, the applicant should, present the originals of supporting documents that are intended for the specific application and that will be kept by the consulate, (e.g. statement of employment from the applicant's employer, proof of sponsorship and/or accommodation). Applicants may be requested to provide a copy of an original supporting document that will not be kept, e.g. marriage or birth certificates. The original should, however, be presented when lodging the application, and returned to the applicant.

False or fraudulent documents should be kept as proof in case of an appeal and/or, where applicable, for further proceedings (e.g. analysis of the document, submission of the document to the host country's authorities).

If the applicant is unable to present the original documents, the consulate can decide to start processing the visa application with facsimile or photocopies. The final decision shall, in principle, only be taken when the required documents have been submitted as originals.

### **5.1.2 Should the supporting documents be translated?**

A balance should be struck between:

- requiring a translation of all documents presented by the applicant as this could be both time-consuming and costly;
- the consulate's capacity to analyse supporting documents submitted in the language(s) of the host country, and
- the need to present proofs in the language(s) of the Member State concerned in case of an appeal against a negative decision.

Therefore, the consulates should inform applicants (e.g. on websites, on notice boards) which documents must be translated and into which language.

### **5.2 Which documents should be submitted in support of an application for a uniform visa?**

Supporting documents should provide evidence of the following:

- the purpose of the intended journey;
- proof of accommodation, or proof of sufficient means to cover the applicant's accommodation;
- that the applicant possesses sufficient means of subsistence both for the duration of the intended stay and for the return to his country of origin or residence, or for the transit to a third country into which he is certain to be admitted, or that he is in a position to acquire such means lawfully, in accordance with Article 6 (1)(c) and (3) of the Schengen Borders Code;
- information enabling an assessment of the applicant's intention to leave the territory of the Member States before the expiry of the visa applied for.

A non-exhaustive list of supporting documents which the consulate may request from the applicant is set out in [Annex 14](#).

Supporting documents should be assessed in relation to the individual application and one document might render another superfluous.

**Examples:** *The accommodation envisaged generally depends on the purpose of the journey: private accommodation for a private or family visit, hotels for tourism, etc.*

*An invitation or sponsorship may have an impact on the amount of the requested means of subsistence.*

*A travel agency may provide one single document serving as proof of the purpose of the intended journey, proof of accommodation, proof of means of subsistence, if travel expenses have been prepaid.*

**5.2.1 Non-exhaustive list of supporting documents regarding the purpose of the journey, the accommodation and the assessment of the applicant's intention to leave the territory of the Member States that may be requested by the consulate**

<b>A. DOCUMENTATION RELATING TO THE PURPOSE OF THE JOURNEY</b>	
<b>(1) for business trips:</b>	
	<i>Additional comments and examples</i>
(a) an invitation from a firm or an authority to attend meetings, conferences or events connected with trade, industry or work;	Invitations should preferably be personalised, but generic invitations may be accepted.
(b) other documents which show the existence of trade relations or relations for work purposes;	<i>Examples:</i> Contracts, payment of invoices, list of orders.
(c) entry tickets for fairs and congresses, if appropriate;	
(d) documents proving the business activities of the company;	<i>Examples:</i> Annual business register, extract of commerce register, annual report.
(e) documents proving the applicant's employment status in the company;	<i>Examples:</i> Contract, proof of social security contributions
Specific categories of persons	
f) lorry drivers	A written request from the national association (union) of carriers of the host country providing for international road transportation, stating the purpose, duration

	<p>and frequency of the trips</p> <p>Written request from the partner company based in the Member State</p> <p>Driver's licence for international transport</p>
g) seafarers	<p>Seaman's book</p> <p>Covering letter from recruiting company stating the name and the rank of the seafarer</p> <p>Vessel's name, vessel's arrival date in port and the date of the seafarer's joining of the vessel</p>
h) persons travelling for the purpose of carrying out paid activity	<p>The applicant must provide a work permit or any similar document as provided by the national legislation of the Member State where a paid activity is to be carried out, if applicable.</p>
<b>(2) for journeys undertaken for the purposes of study or other types of training:</b>	
(a) a certificate of enrolment at an educational establishment for the purposes of attending vocational or theoretical courses in the framework of basic and further training;	
(b) student cards or certificates of the courses to be attended;	<p>A student card proving the status of the applicant in his country of residence is not sufficient as supporting document.</p> <p>A student card can only be accepted as supporting document if it is issued by the host university, academy, institute, college or school where the studies or educational training is going to take place.</p>
<b>(3) for journeys undertaken for the purposes of tourism or for private reasons:</b>	
an invitation from the host if staying with one;	<p>This might be a specific form as serving as proof of private accommodation.</p> <p>When the data regarding the host have not been verified by the authorities of the Member State dealing with the application,</p>

	<p>the consulate shall request the applicant to present:</p> <p>A copy of ID card or bio data page of the host's passport; residence permit; proof of residence (property title deeds, rental agreements etc., proof of income).</p>
<p>a document from the establishment providing accommodation or any other appropriate document indicating the accommodation envisaged;</p>	<p>An appropriate document may be:</p> <p>a document proving the existence of a rental agreement</p> <p>or a property title deed, in the applicant's name, to a property situated in the Member State of destination</p>
<p>confirmation of the booking of an organised trip or any other appropriate document indicating the envisaged travel plans;</p> <p>in the case of transit: visa or other entry permit for the third country of destination; tickets for onward journey;</p>	<p>Documents regarding the itinerary should be completed with documents regarding the means of transport:</p> <p>reservation of return or round ticket (if travelling by a public means of transport);</p> <p>or,</p> <p>drivers licence, car insurance (if travelling by private car);</p>
<p><b>(4) for journeys undertaken for political, scientific, cultural, sports or religious events or other reasons:</b></p>	
<p>a) "active" participants (e.g. lecturers, athletes, performers)</p>	
<p>- invitation, enrolments or programmes stating (wherever possible) the name of the host organisation and the length of stay or any other appropriate document indicating the purpose of the journey;</p>	<p>The supporting document shall mention the duration of the event.</p> <p>In the case of an invitation by a non-profit organisation to an event:</p> <p>Representatives of non-profit organisation: should present an official document stating that the organisation is registered as such and that the applicant represents it.</p> <p>Where relevant, it should be established within local Schengen cooperation, which is</p>

	the authority competent for such registration.
b) “passive” participants (e.g. audience, supporters)	
- entry tickets,	<p>In the case of an invitation by a non-profit organisation to an event:</p> <p>Participants in events organised by non-profit organisation should present an official document stating that the organisation is registered as such.</p> <p>Where relevant, it should be established within local Schengen cooperation, which is the authority competent for such registration.</p>

<p><b>5) for journeys of members of official delegations who, following an official invitation addressed to the government of the third country concerned, participate in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of a Member State by intergovernmental organisations:</b></p>	
<p>a letter issued by an authority of the third country concerned confirming that the applicant is a member of the official delegation travelling to a Member State to participate in the above-mentioned events, accompanied by a copy of the official invitation;</p>	<p><u> Holders of diplomatic, service/official or special passports:</u> such passports are specifically issued to be used for journeys with an official duty purpose. Therefore, it should be the issuing authority (or the competent administration) which applies for the visa. Additionally a <i>note verbale</i> from the Ministry of foreign affairs of the issuing authorities must be presented (or, if the application is submitted in a country other than the applicant's country of origin, from the third country's diplomatic mission).</p> <p>This includes events held by an EU institution.</p>
<p><b>6) for journeys undertaken for medical reasons:</b></p>	
<ul style="list-style-type: none"> <li>- certificate from a medical doctor (designated by the consulate) and/or a medical institution that the claimed necessary medical treatment is not available in the applicant's country of origin</li> <li>- an official document of the receiving medical institution confirming that it can perform the specific medical treatment and the patient will be accepted accordingly</li> <li>- proof of sufficient financial means to pay for the medical treatment and related expenses;</li> <li>- proof of prepayment of the treatment;</li> <li>- any other correspondence between the sending medical doctor and the receiving hospitals, if available.</li> </ul>	

**B. DOCUMENTATION ALLOWING FOR THE ASSESSMENT OF THE APPLICANT'S INTENTION TO LEAVE THE TERRITORY OF THE MEMBER STATES BEFORE THE EXPIRY OF THE VISA**

The assessment of the applicant's intention to leave the territory of the Member State before the expiry of the visa depends mainly on the stability of his/her socio-economic situation in his country of residence: stability of the employment, of the financial situation, of the family ties. This assessment leads to the determination of a risk.

	<i>Additional comments and examples</i>
(1) reservation of or return or round ticket	In general a paid return ticket is not required but can be requested in exceptional circumstances. Ticket reservation free of charge often not possible
(2) proof of financial means in the country of residence	'Financial means' may be proved by recent bank statements showing movement of means over a certain period (minimum the last three months).
(3) proof of employment	'Employment' may be proved by a work contract; certificate of employment; or information on professional status, bank statements, proof of social security contribution.
(4) proof of real estate property	'Real estate property' may be proved by title-deed.
(5) proof of integration into the country of residence: family ties; professional status.	'Family ties' may be proved by a marriage certificate or any document regarding parents and/or children and their place of residence.

**C. DOCUMENTATION IN RELATION TO THE APPLICANT'S FAMILY SITUATION**

	<i>Additional comments and examples</i>
(1) consent of parental authority or legal guardianship (when a minor does not travel with them);	The consent of the parental authority or legal guardian should be requested from applicants less than 18 years of age, irrespective of the age of majority in the country of residence, and therefore irrespective of discrimination

	<p>which may exist between the sexes regarding the age of majority.</p> <p>The consulate shall accept a consent given in the legal form of the country where the minor resides.</p>
(2) proof of family ties with the host/inviting person.	

### 5.2.2 Proof regarding the means of subsistence

The applicant shall present proof that he possesses sufficient means of subsistence both for the duration of the intended stay and for the return to his country of origin or residence, or for the transit to a third country into which he is certain to be admitted, or that he is in a position to acquire such means lawfully.

The proof may be constituted by:

- a) recent bank account statements showing movements over a certain period (at least the last three months)
- b) credit card(s) and a credit card account statement
- c) traveller's cheques
- d) salary slips
- e) certificate of employment
- f) registered proof of sponsorship and/or private accommodation

Consulates shall calculate what is considered as "sufficient means of subsistence" on the basis of the reference amounts set by Member States, See [Annex 18](#).

Consulates shall take into account:

- whether accommodation is provided free of charge to the applicant;
- whether the cost of the stay is covered entirely or partly by a reliable sponsor.

Consulates should be aware that, in some countries, a loan may be obtained in cash just for the purpose of presenting the equivalent of the requested means of subsistence to the consulate and the cash is returned when the visa application has been submitted. In such countries, consulates may refuse to accept presentation of cash as proof of means of subsistence.

### 5.2.3 Treatment of “bona fide” applicants

A “bona fide” applicant is an individual applicant known to the consulate for his integrity and reliability (in particular the lawful use of previous visas), and for whom there is no doubt that he will fulfil the entry conditions at the time of the crossing of the external borders of the Member States. Consulates may waive the requirement to present documents regarding the purpose of the journey, accommodation and the means of subsistence in the case of “bona fide” applicants. Such bona fide status should be determined on an individual basis.

Consulates may, in relation to reliable international companies, accept that specific employees in a given third country benefit from a "bona fide" status. Specific supporting documents should be required to prove this status and the company concerned should designate a contact person who can confirm the authenticity of the submitted supporting documents.

High income or assets, employment in a certain company or membership of a certain organisation do not automatically imply a “bona fide” status.

### 5.2.4 Specific supporting documents when applying for an airport transit visa

The following documentation should be presented when an application for an airport transit visa is lodged:

- proof of plausible/logical intended itinerary;

**Example:** *An applicant indicates that he wishes to travel from Conakry (Guinea) to Casablanca (Morocco) via Paris (France) even if direct flights exist.*

The applicant should be invited to explain the reasons for the itinerary

- proof of the intention of carrying out the onward journey: continuation ticket, visa for the next and/or final destination;
- the applicant’s intention not to enter the territory of the Member States should be verified on the basis of an assessment of the stability of his socio-economic situation in his country of residence .

## 5.3 Travel Medical Insurance

### **Legal basis: Visa Code, Article 15**

When applying for a uniform visa for one or two entries, the applicant shall present such proof to cover the intended visit(s) upon submission of the application. In case a multiple-entry visa is applied for, the applicant shall present proof of travel medical insurance covering the first intended stay. In such cases, the applicant must sign the statement in the relevant field

of the application form indicating that he is aware that he must hold adequate travel medical insurance for future visits as well.

The insurance should be taken out in the applicant's country of residence, but if that is not possible, insurance can be taken out elsewhere. Third parties, e.g. an inviting person, may take out insurance on behalf of the applicant.

### **5.3.1 Who is exempt from presenting proof of travel medical insurance?**

Holders of diplomatic passports do not have to present proof of travel medical insurance.

Family members of EU and Swiss citizens who are covered by Directive 2004/38/EC ([see Part III](#)) are exempted from the requirement to produce travel medical insurance. This exemption is in line with the exemption of this category of persons from filling in field no. 33 of the application form.

The insurance requirement may be considered to have been met where it is established that an adequate level of medical insurance may be presumed in the light of the applicant's professional situation. The exemption from presenting proof of travel medical insurance may concern particular professional groups, such as seafarers, who are already covered by travel medical insurance as a result of their professional activities.

Persons applying for an airport transit visa are not required to present proof of travel medical insurance, as holders of such visa are not allowed to enter into the territory of Member States.

### **5.3.2 What is an adequate travel medical insurance?**

The insurance shall be valid throughout the territory of the Member States and cover the entire period of the applicant's intended stay or transit within the validity of the visa, i.e. the insurance shall only cover the period of effective stay, and not the validity of the visa.

The minimum coverage shall be EUR 30 000.

As part of local Schengen cooperation, information on insurance companies offering adequate travel medical insurance, including verification of the type of coverage, should be shared and regularly updated, see *Handbook for the organisation of visa sections and local Schengen cooperation, Part II, point 2.3*.

## 6. EXAMINATION OF THE VISA APPLICATION

### *Legal basis: Visa Code, Article 21*

#### **6.1 Basic principles**

Once the consulate has established that it is competent for dealing with a visa application (see chapter 2), that the application is admissible (see [point 3.5](#)), the VIS should be consulted and the application file should be created in the VIS, and the visa application shall be examined to:

- ascertain whether the applicant fulfils the entry conditions,
- assess the risk of illegal immigration and the applicant’s intention to leave the territory of the Member States before the expiry of the visa applied for, and
- assess whether the applicant presents a risk to the security or public health of the Member States.

The depth of the examination depends on the risk presented by the applicant according to his nationality, local circumstances, his profile and personal history.

A previous visa refusal shall not lead to an automatic refusal of an application and each application must be assessed on its own merits and on the basis of all available information.

As regards the specific rules relating to applicants who are family members of EU and Swiss citizens, see [Part III](#).

Specific aspects when assessing the following specific cases are described below:

- airport transit visas (see [point 6.14](#));
- minors (see [point 6.15](#)).

#### **6.2 Creation of an application file and consultation of the VIS**

When creating the application file, the consulate should consult the VIS to check the visa applicant’s “history” which may have been recorded.

The reliability of the consultation depends on the quality of the personal data entered. The consulate should be aware that entering incorrect or incomplete personal data could lead to false rejection or false identification.

The consulate should also be aware that a visa applicant not being recorded in the VIS does not necessarily mean that he never applied for a visa, but only that the VIS was not yet operational in the given region when the previous application was lodged or that the previous application was lodged more than five years earlier.

In the event that a file concerning the applicant is found in the VIS, consulates shall examine the results of the VIS consultation to avoid false identification resulting from, for example, identical names and shall take account of the information stored. To avoid false identification, it is recommended that VIS searches be carried out using a combination of several alphanumeric types of data or, where possible, biometric data in combination with alpha-numeric data.

***Recommended best practice:*** *In the event of an earlier refusal being recorded in the VIS, the consulate should, if appropriate, contact the Member State that took that decision via VISMail to learn more about the specific case and circumstances.*

### **6.3 The authenticity and reliability of documents and statements**

When examining the application, the consulate must take into account the authenticity and reliability of the documents presented and of the applicant's statements, whether verbal or in writing. The level of reliability of documents depends on the local conditions and may therefore vary from one country to another and from one type of document to another. Within local Schengen cooperation consulates should share information and establish best practices.

When the applicant's verbal or written statements lack coherence or appear suspicious, they should be double-checked.

#### ***Examples:***

- *Some documents are officially harmonised or, by tradition, have a similar appearance; consulates should be aware of documents not following the usual pattern or with odd or outdated features;*
- *If, in a given host country, work contracts are frequently drawn up for friends or relatives to facilitate the issuing of a visa, although the persons concerned are not actually employed, but if, in the same country, all employees have to be registered by an official agency, a good practice would be to include the registration certificate, where available, as supporting document;*
- *Information confirming the validity of supporting documents or invalidating them may be available on-line: consulates should share such information and check systematically (where the risk is high), when suspicious documents are submitted or randomly (where the risk is low), the actual existence of such documents;*
- *A required supporting document may generally, and irrespective of the applicant's personal situation, be difficult to obtain in a given location, therefore leading visa applicants to frequently submit fakes without any intention to immigrate illegally. Under such circumstances, consulates may subject to exchanges in local Schengen cooperation reconsider the necessity of requesting that particular document.*

## 6.4 The travel document

Whereas the validity of the travel document should have been checked when the consulate establishes whether the application is admissible or not (see [point 3.5.1](#)), it shall at this stage verify that the travel document presented is not false, counterfeit or forged.

Within local Schengen cooperation, consulates should exchange information regarding the use of false, counterfeit or forged travel documents.

**Recommended best practices** for checking whether a travel document is false, counterfeit or forged:

- comparison with genuine specimen of the document;
- examine the travel document in order to rule out the possibility that it is counterfeit or forged, by checking the numbering, the printing and stitching of pages, inserted seals and stamps; the inclusion of other persons than the holder and all corrections made in the document especially at the personal data page should be clarified by the traveller;
- use of equipment such as UV lamps, magnifying glasses, retrieval lamps, microscopes and, where necessary, more advanced equipment such as video spectral analysers;
- if the necessary equipment is available and an ePassport is presented, it should be verified that the chip signature has not been compromised.

Given that verification of whether a travel document is false, counterfeit or forged can be both time consuming and difficult, it is recommended that document specialists such as Police Liaison Officers be consulted and that up to date knowledge is ensured through training.

**Recommended best practice** in case a false, counterfeit or forged travel document is detected:

Such documents should never be returned to the holder but preferably the offence should be denounced and the document transmitted to the authorities of the issuing third country. However, in case of disproportionate punishment for such offence on the part of the third state concerned, the consulate should not make such denunciation to the authorities of third country concerned.

## 6.5 The purpose of the intended stay

The consulate shall verify the purpose(s) and the legality of the intended stay and the applicant's justification of the purpose of the intended stay and its legality. A large number of

invitations from the same host/referee could indicate that the real purpose of travel is illegal immigration and/or employment.

The consulate shall obtain as ample information from the applicant upon submission of the application as possible in addition to the supporting documents in order to verify the purpose of the journey.

Therefore, the consulate must in particular check whether the declared purpose is coherent and credible and the supporting documents correspond to the stated purpose:

***Examples of incoherence between declared purpose of stay and factual information provided:***

- *an applicant claims to travel to an industrial area, staying in a cheap hotel, for the purpose of tourism;*
- *an applicant claims to visit a professional event at dates that do not correspond to the actual dates of the event;*
- *an applicant claims that the purpose of the trip is to visit a friend, but it turns out that the person concerned is absent during that period;*
- *a trader in jewellery claims to have been invited to attend a medical conference.*
- *A third-country national indicates that the purpose of his trip is to participate in a congress; he presents an invitation but no documentation showing that he practices a profession or holds a qualification relating to the subject of the congress.*

- whether the purpose of travel is justified: an application for a visa for medical treatment where local treatment is available may hide an intention to abuse social welfare in the Member State. However, that may not always be the case: the applicant may wish to receive medical treatment where other family members reside; or wish to be treated by a doctor who has treated him previously;
- whether the purpose of travel follows a pattern for illegal employment or immigration: individual applicants coming from the same region and always booking at the same hotel could be suspicious;
- whether the purpose is against the national interest of all Member States or of a specific Member State for reasons of security, public order or external relations.

Consulates should be aware that a journey may have several different purposes within the same Member State or in the territories of several Member States, e.g.:

- business meeting followed by a weekend of tourism;
- paid activity combined with private visit to friends;
- training followed by a religious pilgrimage.

## **6.6 The conditions of the intended stay**

The consulate shall verify the applicant's justification for the conditions of the intended stay:

- accommodation during the stay;
- the possession of sufficient means of subsistence, both for the duration of the intended stay and for the return to the applicant’s country of origin or residence, or for the transit to a third country into which he is certain to be admitted, or is in a position to acquire such means lawfully. In order to assess the means of subsistence, the reference amounts set by individual Member States must be taken into account.

### **6.6.1 How to verify the sufficient means for leaving the territory of the Member States?**

The consulate should check the following:

- if no transport ticket has been presented, it should be checked whether the applicant possesses sufficient financial means to acquire a transport ticket;
- if the applicant wishes to leave the territory of the Member States by a private means of transport, the consulate may request proof of such private means of transport (registration, insurance) and the driver’s or pilot’s licence. The consulate may also request documents regarding the state of that means of transport;
- if the applicant has presented an onward ticket, it should be checked whether he is in possession of a visa or any other document allowing the entry into the intended country of destination.

### **6.6.2 How to estimate the sufficient means of subsistence for the stay?**

The consulate should estimate both the amount of sufficient financial means necessary for the stay and the reliability of the financial resources presented. The consulate should always assess the reliability of the means of subsistence presented, according to the local context.

The consulate should roughly estimate the amount necessary on the basis of:

- the length of the intended stay;
- the purpose of the intended journey;
- the cost of living as notified by Member States in accordance with Annex 18. The consulate should accept as sufficient financial resources below that estimate if the applicant benefits from financial support or free services (or at a reduced price) during the period spent within the territory of the Member States;
- proof of sponsorship and/or private accommodation;
- a reliable and credible certificate confirming financial support of a legal resident within the territory of the Member States ;
- a prepaid receipt from a reliable travel agency.

If the applicant presents a work permit issued by a Member State, he might be exempted from presenting additional proof of financial means as it can be assumed that his salary can cover the cost of the short stay.

The consulate should request sufficient financial resources above that estimate when the purpose of travel is:

- luxury tourism;
- medical treatment in order to cover the cost of such treatment calculated on the basis of a realistic estimate made by the host medical entity, unless such cost is covered by a reliable entity that can be verified by an accredited doctor;
- study in order to cover the cost of the school fees, unless covered by a reliable sponsorship or proof that such costs have been prepaid.

If the applicant covers the expense of the journey himself, he should present proof of possessing personally the required resources, e.g. by salary slips, bank statements. The consulates may check the reliability and stability of the amounts credited to a bank statement in case of doubt.

If accommodation is provided free of charge to the applicant, the estimate of the necessary financial resources may be reduced accordingly, if the commitment to provide such free accommodation is reliable.

In case of an all-included invitation or total or partial sponsorship by a private company, any other legal entity or a private person, the consulate should adapt the level of the required resources and check the reliability of the commitment according to the nature of the relationship (commercial, private, etc.).

### **6.7 The security risk and the public health risk**

The consulate shall verify whether the applicant is a person for whom an alert has been issued in the Schengen Information System (SIS) for the purpose of refusing entry and that the applicant is not considered to be a threat to public policy, internal security or public health or to the international relations of any of the Member States, in particular where no alert has been issued in Member States' national databases for the purpose of refusing entry on the same grounds and the outcome of these checks/consultations must be taken into account.

To check the security risk, the consulate shall:

- consult the SIS to check whether the visa applicant has been subject to an alert. In case of a “hit”, it shall analyse the results of the SIS consultation to avoid false identification resulting from identical names;
- launch the prior consultation of other Member States, if applicable;
- consult national database in accordance with its national legislation;

The consultation of SIS and the prior consultation of other Member States shall not be carried out when the applicant applies for an airport transit visa.

The consulate may also request an applicant’s criminal record in case of strong suspicion regarding the applicant.

Regarding public health risks, consulates may refuse visas in case of disease constituting a public health risk as defined by the International Health Regulations (IHR) of the World Health Organisation (WHO) and other infectious diseases or contagious parasitic diseases if they are subject of protection provisions applying to nationals of Member States. In such circumstances, consulates shall receive instructions from their central authorities. “Public health risk” is assessed through the Community Network set up under Decision 2119/98/EC and its Early Warning and Response System (EWRS) and the ECDC, set up by [Regulation \(EC\) No 851/2004 establishing a European centre for disease prevention and control](#). (See also: [ecdc.europa.eu](http://ecdc.europa.eu))

## 6.8 Use of VIS Mail

### *Article 16 of Regulation (EC) No 767/2008*

VIS Mail has been developed as a communication network for the transmission of information for consular cooperation, transmitting supporting documents, correcting data and for advance data deletion.

It is to be used for consultations and for transmitting information between Member States.

Since all Member States using VIS Mail are also VIS users, the VIS application number was introduced as a mandatory element of every message to refer to the relevant applicant. Thus, for every request sent through VIS Mail, the consulate should transmit a message with a VIS application number as the mandatory part of the message, indicating the Member State to which the message is addressed. The recipient Member State(s) should transmit the response via the VIS Mail mechanism quoting the same VIS application number, to the Member State who initiated the request.

The VIS Mail mechanism shall be used for:

- consultations based on Article 22 of the Visa Code (prior consultation);
- notification of issuance of an LTV (Article 25(4) of the Visa Code);
- ex-post notifications of issued visas, according to Article 31(4) of the Visa Code.

The VIS Mail mechanism should be used for transmitting the following types of information:

- messages related to consular cooperation, in accordance with Article 16(3) of the VIS Regulation, such as copies of travel documents and other documents supporting the application;
- requests for supporting documents, in accordance with Article 16(3) of the VIS Regulation;
- messages on inaccurate data, in accordance with Article 38(3) of the VIS Regulation;
- Member State nationality acquired by an applicant, in accordance with Article 25(2) of the VIS Regulation.

The recipient of business messages (request or information) will be determined either:

- *automatically* by the sending VIS Mail national application, using the relevant information in the VIS application file (which includes the VIS national authority responsible for the visa application), or
- *manually* by the end-user.

Recipients of messages based on Articles 8, 22 and 31 of the Visa Code (*'Representation arrangements', 'Prior consultation of central authorities of other Member States' and 'Information of central authorities of other Member States'*) will be *determined automatically* in accordance with the list of applicants' nationality and specific categories determined by each Member State. The Member State's national authority responsible for the application is responsible for this functionality.

For details on the functioning of the VIS Mail mechanism, the VIS Mail specifications – Annex to *Commission Implementing Decision on the technical specifications for the VIS Mail Communication Mechanism for the purposes of Regulation (EC) No 767/2008 of the European Parliament and of the Council and repealing Commission Decision 2009/377/EC and Commission Implementing Decision C(2012) 1301*– provide a comprehensive series of details.

### **6.9 Travel Medical Insurance (TMI)**

The consulate is responsible for checking whether the TMI presented by the applicant is adequate, i.e. coverage during the intended stay, in the case of an application for a single or double-entry visa, or for the first intended stay in the case of an application for a multiple-entry visa, before the final decision is taken on the application.

If it is assumed that an adequate level of medical insurance has been demonstrated through other means, e.g. due to the applicant's professional situation, the reliability of the coverage should be verified.

Certain credit card companies include travel insurance as one of the advantages of the credit card. If the coverage offered conforms with the criteria in the Visa Code, such credit cards may be accepted as valid insurance.

If the length of the intended stay applied for exceeds the validity of the TMI, the consulate shall either limit the length of stay granted to the period covered by the TMI or invite the applicant to acquire a TMI that covers the entire period of the intended stay. The TMI shall not be required to cover the entire validity of a single entry visa, i.e. only the period of effective stay should be covered and not the 'period of grace'.

If the insurance presented is not considered adequate, this should not automatically lead to refusal of the visa application, but the applicant should be allowed to provide such proof before the final decision on the application can be taken.

## 6.10 Verification of the length of previous and intended stays

The consulate shall check the length of previous and intended stays to verify that the applicant has not exceeded/will not exceed the maximum duration of authorised stay in the territory of the Member States, irrespective of possible stays authorised under a national long-stay visa or a residence permit, i.e. only stays covered by a uniform visa or a visa with limited territorial validity should be counted. However, responsibility for complying with the 90/180-day rule lies with the visa holder.

*Examples of short stays before, during or following after a long stay:*

*A person who has stayed in Spain for six months on the basis of a national long-stay visa or a residence permit may be issued a uniform or limited territorial validity (LTV) visa the validity of which starts immediately after the expiry of the long-stay visa or the residence permit without the person having to exit the Schengen area.*

*A visa applicant who is still residing in Spain on the basis of a Spanish national long-stay visa may be issued a uniform (or LTV) visa during the validity of the Spanish national long stay-visa for a short stay in another Member State after his stay in Spain.*

*A visa applicant who has been issued a Spanish national long-stay visa but not yet travelled to Spain may be issued a uniform (or LTV) visa to cover any short stay in any other Member State preceding his stay in Spain.*

The day of entry shall be calculated as the first day of stay in the territory of the Member States and the day of exit shall be calculated as the last day of stay in the territory of the Member States.

The notion of 'any' implies the application of a "moving" 180-day reference period, looking backwards, at each day of the stay, into the last 180-day period, in order to verify if the 90/180-day requirement continues to be fulfilled. This means that an absence for an uninterrupted period of 90 days allows for a new stay for up to 90 days.

Existing entry and exit stamps in the submitted travel document should be verified by comparing the dates of entry and exit to establish that the person concerned has not already exceeded the maximum duration of authorised stay in the territory of the Member States, i.e. 90 days in any 180-day period. Particular attention should be paid to detecting possible alteration of the stamps affixed to the travel document with the purpose of hiding the duration of a previous (over)stay in the territory of the Member States.

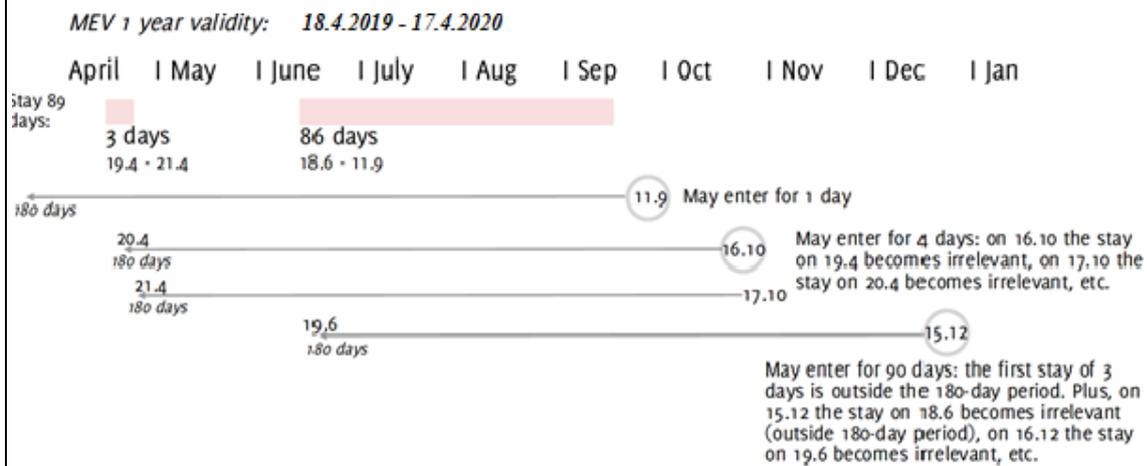
**Examples of calculation of stay:**

1) A person holding a multiple-entry visa for 1 year (18 April 2019 to 17 April 2020) enters for the first time on 19 April 2019 and stays for 3 days. She then enters again on 18 June 2019 and stays for 86 days. What is the situation on specific dates? When will this person be allowed to enter again?

On 11 September 2019: Over the last 180 days (16 March 2019 to 11 September 2019) the person had stayed 3 days (19 April 2019 to 21 April 2019) plus 86 days (18 June 2019 to 11 September 2019) = 89 days = no overstay. The person may still stay for up to 1 day.

As of 16 October 2019: The person might enter for a stay of 4 days (on 16 October 2019 the stay on 19 April 2019 becomes irrelevant (outside the 180-day period); on 17 October 2019 the stay on 20 April 2019 becomes irrelevant (outside the 180-day period; etc.).

As of 15 December 2019: The person might enter for 90 days (on 15 December 2019, the stay on 18 June 2019 becomes irrelevant (outside the 180-day period); on 16 December 2019, the stay on 19 June 2019 becomes irrelevant, etc.).

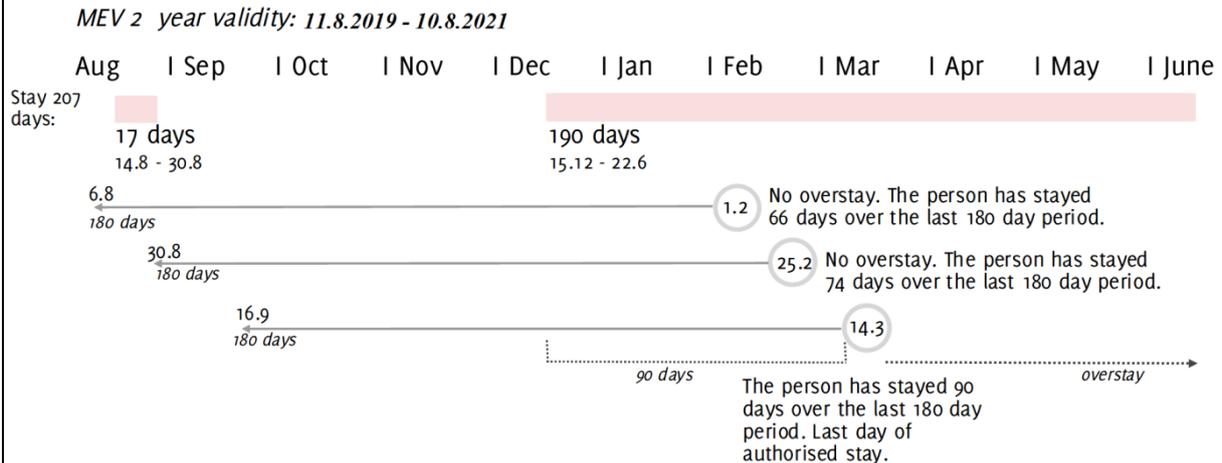


2) A third-country national has been granted a multiple-entry visa for 2 years (11 August 2019 to 10 August 2021) allowing for a stay of 90 days per 180 days. The visa holder enters on 14 August 2019 and leaves on 30 August 2019 (17 days). On 15 December 2019 the person enters again and leaves only on 22 June 2020. What is the situation on specific dates? When should this person have left?

On 1 February 2020: Over the last 180 days (6 August 2019 to 1 February 2020) the person had stayed 17 days (14 August 2019 to 30 August 2019) plus 49 days (15 December 2019 to 1 February 2020) = 66 days = no overstay.

On 25 February 2020: Over the last 180 days (30 August 2019 to 25 February 2020) the person had stayed 1 day (30 August 2019) plus 73 days (15 December 2019 to 25 February 2020) = 74 days = no overstay.

On 14 March 2020: Over the last 180 days (16 September 2019 to 14 March 2020) the person had stayed 90 days (15 December 2019 to 14 March 2020)  $\Rightarrow$  14 March 2020 = last day of authorised stay.



3) A third country national has been granted a multiple-entry visa for 1 year (1 January 2019 to 31 December 2019) allowing for a stay of 90 days per 180 days. The visa holder enters on 1 January 2019 and leaves on 10 January 2019 (10 days), then enters and leaves respectively on 1 March 2019 and 30 March 2019 (30 days) and finally enters and leaves on 1 May 2019 and 9 June 2019 (40 days). What is the situation on specific dates? For how long would the person be allowed to enter again (consecutive stay)?

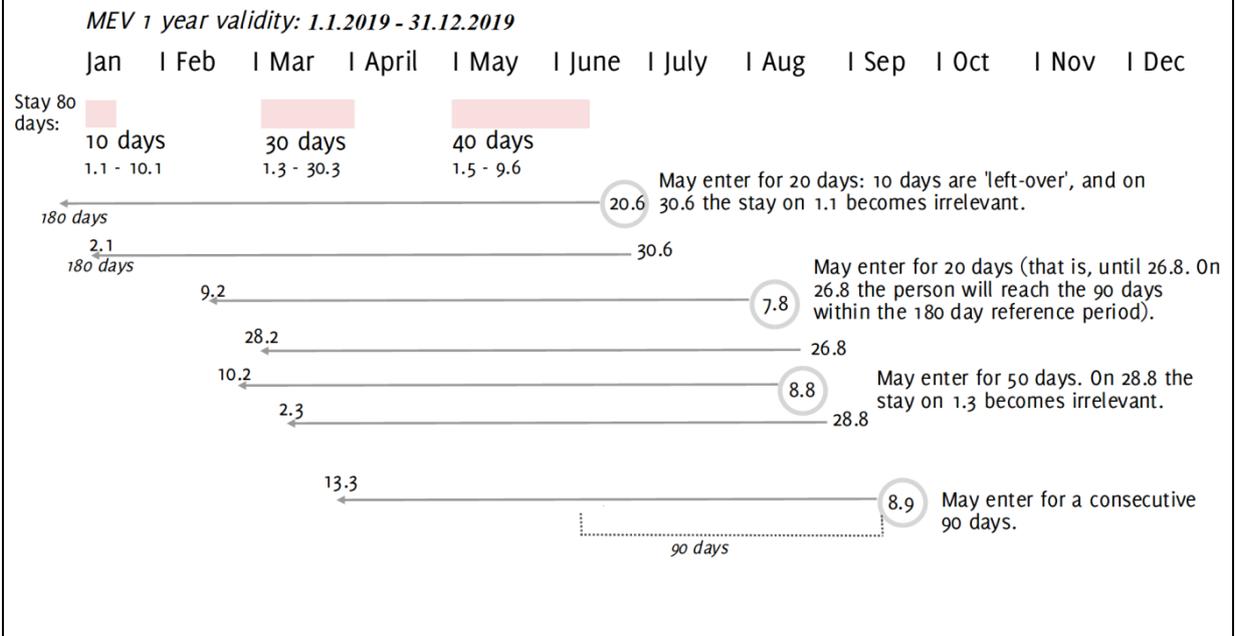
On 20 June 2019: The person might enter for a consecutive 20 days maximum (10 days 'leftover' from the authorised 90 days (20 June to 29 June), plus an additional 10 days since on 30 June 2019 the stay on 1 January 2019 becomes irrelevant and on 1 July 2019 the stay on 2 February 2019 becomes irrelevant, etc. (outside the 180-day period).

On 7 August 2019: The person can still enter for a consecutive 20 days maximum as explained above, because the 30-day stay that started on 1 March 2019 will only start becoming irrelevant on 28 August (since its corresponding 180-day reference period runs from 2 March 2019). On 26 August, therefore, the person should leave the Schengen area as on that day he will reach the 90 days within the 180-day reference period (which runs from 28 February).

On 8 August 2019: The person might enter for a consecutive 50 days maximum (10 days 'leftover' from the authorised 90 days, plus an additional 10 days since on 30 June 2019 the stay that started on 1 January 2019 starts becoming irrelevant, plus 30 days, since on 28

August 2019, the stay that started on 1 March 2019 starts becoming irrelevant (out of the 180-day reference period which runs from 2 March 2019 in this case).

On 8 September 2019: The person might enter for a consecutive 90 days maximum. 90 days consecutive absence (between 10 June 2019 and 7 September 2019) always leads to a new stay for up to 90 days.



**Recommended best practice** in relation to the calculation of previous and intended stays:

Member States should use the 'length of stay calculator': [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/border-crossing/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/border-crossing/index_en.htm).

### 6.11 Additional documents

The list of required supporting documents should be made available to the public. It can then be considered that the presentation of an incomplete file means that the applicant either does not take his application seriously or is unable to present the requested documents and the consulate should, in principle, take the decision on the basis of the application file, as presented, whether complete or not.

However, a consulate may, in justified cases, request additional documents during the examination of an application which are not mentioned in the harmonised list published locally.

#### **Examples:**

- an employment contract presented by an applicant is due to expire shortly; the consulate request the applicant to provide information regarding his future employment/economic

situation;

- the signature on an application from a minor is suspicious and therefore the consulate checks the signer's identity by comparing with the signature on other official documents;
- in the event of the death of a relative in a Member State: a death certificate;
- in the event of a wedding in a Member State: a marriage announcement.

### **6.12 When should an applicant be called for an interview?**

The consulate may, in justified cases, call the applicant for an interview during the examination of an application.

When the examination of the visa application on the basis of the information and the documentation available does not allow a final decision to be taken either issue a visa or refuse the application, the consulate must contact the applicant either by telephone or invite him for a personal interview at the consulate. The interview may also be carried out using other forms of communication (e.g. video call), but only if there is no doubt about the identity of the person being interviewed.

The need for an interview should be determined by the consulate on the basis of the assessment of, among other things, general migratory risk in a given location. It can be a good way to obtain further information from the applicant and to ascertain the reliability of information relating to the application.

This additional interview is distinct from submitting the application in person (see [point 2.3](#)). However, it should be avoided that certain categories of applicants are systematically called for interviews at the consulate after lodging the application at an external service provider. In cases where there is a need for systematic in-depth scrutiny of applications from certain categories of applicants (e.g. first-time travellers), it is recommended best practice to have a consular staff member present at the external service provider to conduct such interviews at the submission stage.

### **6.13 The assessment of the risk of illegal immigration and of the applicant's intention to leave the territory of the Member States before the expiry of the visa**

Consulates shall assess:

- the risk of illegal immigration by the applicant to the territory of Member States (i.e. the applicant using travel purposes such as tourism, business, study or family visits as a pretext for permanent illegal settlement in the territory of the Member States) and
- whether the applicant intends to leave the territory of the Member States before the expiry of the visa applied for .

As a part of local Schengen cooperation, consulates should define ‘profiles’ of applicants presenting a specific risk, according to local conditions and circumstances which also takes account of the general situation in the country of residence (e.g. politically unstable areas, high level of unemployment and wide-spread poverty). ‘Profiles’ could be based on the stability of the applicant's socio-economic situation, but each individual application shall be assessed on its own merits irrespective of possible ‘profiles’ having been drawn up.

The use of local warning lists containing data on specific persons should be verified with national data protection authorities.

The individual level of stability depends on a number of factors:

- family links or other personal ties in the country of residence;
- family links or other personal ties in the Member States;
- marital status;
- employment situation (salary level, if employed);
- regularity of income (employment, self-employment, pension, revenue from investment, etc.) of the applicant or of his/her spouse, children or dependants;
- the level of income;
- the social status in the country of residence (e.g. elected to public office, NGO representative; profession with a high social status: lawyer, medical doctor, university professor);
- the possession of a house/real estate.

The factors may differ depending on the applicant's country of residence:

***Example:** a third-country national subject to the visa obligation and legally residing in another third country whose nationals are exempted from the visa requirement (an Indian national residing in Canada or a Chinese national residing in the United States) normally presents a very limited risk of illegal immigration to the Member States.*

The socio-economic situation may also present diverging aspects: an unemployed applicant may benefit from a very stable financial situation and a well-paid applicant might consider illegal immigration for personal reasons and all elements should be taken into consideration to ensure an objective assessment.

Other aspects to be verified:

- previous illegal stays in the Member States;
- previous abuse of social welfare in the Member States;

- a succession of different visa applications (short stay or long stay visas) presented for different unrelated purposes;
- credibility of the inviting person when the invitation letter is presented.

#### **6.14 Application for an airport transit visa (ATV)**

##### ***Legal basis: Visa Code, Article 21(6)***

A holder of an ATV is not allowed to enter the territory of the Member States. Therefore, the consulates should not verify whether the person applying for this type of visa fulfils the entry conditions (meaning that SIS consultation and prior consultation, if applicable, should not be carried out), but shall:

- check the travel document (see [point 6.4](#))
- verify whether an ATV is appropriate for the planned itinerary, as the applicant may need a visa allowing for entry into the territory of the Member States, see [point 1.4 and 1.5](#), and
- verify the itinerary and the authorisation to enter the country of final destination and assess the risk of illegal immigration while in transit (see [point 5.2.4](#)).

The consulate should verify the following:

- the points of departure and destination of the third-country national and the coherence of the intended itinerary and airport transit: making a long and/or expensive detour to transit through an airport of a Member State appears suspicious, although in some cases it may have a logical explanation;
- proof of the onward journey to the final destination.

#### **6.15 Minors**

**Recommended best practice** in relation to treatment of applications submitted on behalf of minors:

If the applicant is a minor (under 18 years old), the consulate must verify that:

- the persons applying for the visa on his behalf is the parent or legal guardian;
- the consent of the parental authority or legal guardian, irrespective of the age of majority in the country of residence.

Consulates should be aware that in certain third countries one of the parents is allowed to act on behalf of his/her children without the written consent of the other parent;

- the minor has not been unlawfully removed from the care of the person legally exercising parental custody over him: in case of suspicion of such unlawful removal, the consulate will have to make all necessary investigations in order to prevent the abduction or unlawful removal of the minor;
- there is no ground for suspecting child trafficking or child abuse;

- the purpose of the journey is not illegal immigration into the territory of the Member States.

### **6.16 Keeping track of decision making**

*Recommended best practice:* Results of examinations, background checks and interviews should be well documented so that the reasons for the decision can easily be retrieved. These records should ideally be stored in the national IT system and not only in the archived paper file.

### **6.17 Transmission of the application file in cases where the examination of an application is discontinued by a representing Member State**

*Legal basis: Visa Code, Article 8 (2)*

If the representation arrangement between two Member States does not provide for the representing Member State to take final negative decisions on applications, the entire application file (the application form and supporting documents) shall be submitted to the relevant authorities of the represented Member States. The relevant authorities may be the designated consulate or the central authorities. The practicalities of the transmission of the application file should be covered in the bilateral arrangement between the two Member States concerned.

The visa authority which discontinued the examination shall add all the relevant data regarding that discontinuation to the application file in the VIS in accordance with Article 11 of the VIS Regulation.

The general rules on secure transfer of data shall apply for the transfer of application files, see *Handbook for the organisation of visa sections and local Schengen cooperation, Part III*.

### **6.18 Reporting back procedures ('return control')**

There are no EU rules on 'reporting back procedures', i.e. requesting specific categories of travellers to report back to the consulate when returning from the stay for which a visa has been issued. However, the use of such practices should be limited and well-founded and they should not serve to mitigate migratory risk in cases of doubt.

Consulates should refrain from affixing stamps in the visa holder's passport regarding reporting back requirements so as to prevent undue complications for the holder of the travel documents in future.

## 7. DECIDING ON A VISA APPLICATION

### 7.1 What are the deadlines for taking a decision on an application?

**Legal basis: Visa Code, Article 23**

Decisions on visa applications should be taken as soon as possible, without compromising the thorough assessment of whether an applicant fulfils the entry conditions or presents an immigration risk on the basis of the documentation submitted and the information provided.

A means to keep processing times reasonable and relatively short is to make detailed information about the requirements widely available to applicants, so that all relevant documentation and information are submitted with the initial application.

The decision-making may, however, take up to 15 calendar days after the application has been considered admissible (see [point 3.5](#)). This deadline includes the deadline for possible prior consultation of other Member States (see [point 6.7](#)) or of the consulate's own central authorities.

While processing a visa application, the consulate shall not systematically let this deadline expire but take account of duly justified urgency claimed by the applicant (humanitarian grounds). Urgency should be distinguished from negligent late submission of the application.

In individual cases, where further scrutiny of the application is necessary by the Member States' central authorities or in case of representation where the authorities of the represented Member State are consulted, the deadline may be extended up to a maximum of 30 calendar days after the application has been considered admissible:

***Examples of cases where such further scrutiny may be necessary:***

*A visa applicant indicates "family visit" as the purpose of his journey to Slovakia, where he wishes to visit an aunt. The consulate has doubts about the family link between the two and asks for further proof of the family link.*

*A third-country national has been invited to a Member State for a period of two months for specific studies/research at a university laboratory, presenting an authentic invitation from the university. During the examination of the application, doubts arise concerning the exact purpose of the studies/the research (risk of proliferation of chemical weapon) and the consulate wishes to verify the invitation and the background for it further.*

*A third-country national claims to be a family member of a French national living in France (thus not covered by Directive 2004/38) and presents a certificate of marriage in a location where such false 'tailor made' certificates can be obtained easily and further information must be obtained from local authorities.*

Only exceptionally, where additional documentation is required, the deadline may be extended up to a maximum of 60 calendar days after the application has been considered admissible.

***Examples of cases where such further scrutiny may be necessary:***

- *if the documents establishing the civil status of the applicant are to be verified by the authorities in his country of residence or origin.*
- *if it is necessary to seek further information from a sponsor in the Member State about his/her background and relationship with the applicant.*

**7.2 When do the deadlines for taking a decision on an application start running?**

As admissibility can only be verified by the competent consulate, these deadlines start running only when it has been established that the admissibility criteria have been met, and not when the application is submitted by the applicant, irrespective of the organisation of the submission (whether an appointment system is in place or not, whether applications are collected by an external service provider or honorary consul or not).

As regards the specific rules relating to applicants who are family members of EU and Swiss citizens, see [Part III](#).

As regards the specific rules applying to categories of persons covered by Visa Facilitation Agreements, see the respective Guidelines set out in [Annex 8](#).

**7.3 Information to be inserted in the VIS when a decision is made to issue a visa**

When the decision has been taken to issue a visa, the competent consulate must add information to the already existing visa application file regarding the status of that visa, the issuing authority, the information from the visa sticker, etc., in accordance with Article 10 of the VIS Regulation

## 8. TYPES OF VISA TO BE ISSUED

*Legal basis: Visa Code, Articles 24, 25 and 26*

Basic elements to be taken into consideration when deciding on the visa to be issued:

- **period of validity:** the period during which the visa holder may use the issued visa:  
Example: a visa is valid from 1 January – 30 June, and during that period the holder may enter and shall leave the territory of the Member States.
- **period of authorised stay:** the effective number of days that the visa holder may stay in the territory of the Member States during the period of validity of the visa. The period of authorised stay may be from 1 up to 90 days.
- **number of entries:** refers to the number of visits that may be carried out during the period of validity of the visa while respecting the length of the authorised stay:

*Examples:*

- one entry: a visa is valid from 1 January – 30 March and allows for one entry. During that period the holder is allowed to travel once to the territory of the Member States; once he has left the territory of the Member States, he is not entitled to re-enter even if the total number of authorised days of stay have not been used.
- two entries: a visa is valid from 1 January – 30 June, and allows for two entries. During that period the holder may be authorised to stay for a total of 90 days divided into two separate trips.
- multiple entries: a visa is valid from 1 January – 31 December and allows for multiple entries. During this period the holder is allowed to stay up to 90 days in any 180-day period. The stay can be divided into as many separate trips as wished by the visa holder.
- **territorial validity:** the territorial validity of a visa may vary:
  - a uniform visa allows the holder to circulate in the entire territory of the Member states;
  - a visa with limited territorial validity (LTV) allows the holder to circulate only in the Member State(s) for which the visa is valid;
  - an airport transit visa only allows the holder to transit through the international transit areas of airports situated on the territory of the Member States, but not to enter into this territory.

### 8.1 Visa allowing the holder to enter the territory of the Member States

#### A uniform visa

*Legal basis: Visa Code, Article 24*

The territorial validity of the visa: a uniform visa allows the holder to circulate in the entire territory of the Member States.

## 8.2 Period of validity

The period of validity should correspond to the information provided by the applicant. In all cases an additional "period of grace" of 15 days should be included in the period of validity to allow for a certain room for manoeuvre for the visa holder. However, the validity of the visa issued should respect the requirements in relation to the validity of the travel document, i.e. the validity of the travel document must extend three months beyond the intended departure from the territory of the Member States and thus the period of validity of the issued visa should not go beyond that date (i.e. three months before the expiry of the travel document) either (see [point 3.1.1](#)).

The period of validity of a visa cannot exceed 5 years.

**Example:** *an Egyptian national is travelling to Italy to attend a wedding that takes place on 25.6 and wishes to spend additional time for the purpose of tourism after the wedding celebrations. She presents an airline ticket reservation indicating intended arrival on 22.6 and departure on 6.7 and hotel reservations for tourism purposes cover the period 27.6 – 5.7.*

The period of validity of the visa issued should be from 22.6 – 21.7 (30 days): date of arrival + duration of stay+ 15 days of "period of grace".

Member States may decide not to grant such a "period of grace" for reasons of public policy or because of the international relations of the Member States.

A "period of grace" should not be granted when a multiple entry visa (with a period of validity between 6 months and 5 years) is issued as this type of visa already offers flexibility to the holder.

## 8.3 Period of stay

The period of authorised stay should correspond to the intended purpose of stay or transit, while respecting the general rules in relation to the length of stay. Previous stays within the territory of a Member State on the basis of a national long-stay visa or a residence permit have no influence on the stays allowed by a uniform visa or a visa with limited territorial validity.

**Example:** *a Bolivian national spent six months studying at a university in Spain (January – June 2009) on the basis of a national long-stay visa and has returned to Bolivia. Early August he decides to travel to Germany for an intensive language course of six weeks.*

Under such circumstances a uniform visa may be issued allowing for a stay of up to 90 days.

Holders of a valid MEV may, however, be issued a new multiple-entry visa with a long validity provided that the validity of the new visa starts at the expiry of the previous one and

the existing valid visa should not be revoked. Responsibility for complying with the 90/180-day rule lies with the visa holder

#### **8.4 Number of entries**

A uniform visa may be issued for one, two or multiple entries. The applicant should indicate in the application form how many entries he wishes, but it is the consulate examining the application who decide on the number of entries to grant. When a multiple-entry visa is issued, the period of validity of the travel document should be respected (see point 8.1.1 above).

– **one entry**

If the applicant's purpose of travel is one particular event defined in time, only one entry should be allowed for.

**Example:** *an Indonesian national wishes to travel to Greece to follow the basketball world championship which lasts 2 weeks.*

This person should be issued a visa allowing for one entry.

**Recommended best practice:** Persons applying for a visa in a location which is not their place of residence should in principle be issued with a visa allowing only for one entry.

– **two entries**

If the applicant's purpose of travel is one particular event defined in time, but during that visit he wishes to visit the United Kingdom or Ireland, he should be issued a two-entry visa.

**Example:** *an Ethiopian national travels to Belgium to follow a 1-month summer course at a university. During his 1-month stay he wishes to spend a weekend with friends in Dublin.*

This person should be issued a visa allowing for two entries.

**Example:** *a Kosovar is travelling by bus from Pristina to London and back to Kosovo*

This person should be issued a visa allowing for two entries.

Given the particular circumstances under which seafarers work, two-entry visas should be issued with a validity taking into account the duration of the work.

**Example:** *A seafarer from Indonesia, who is a first time applicant, is traveling to Sweden to board a ship and complete a 10 month contract.*

To allow the seafarer to disembark the ship back into a Schengen port and transit through the Schengen territory after his 10 month contract has come to an end, a visa for two entries may be issued.

– **multiple entries**

When a multiple entry visa is issued with a period of validity between 180 days (6 months) and 5 years, the duration of authorised stay is always 90 days (per 180 day-period). This also applies in cases where the visa is issued for the purpose of transit.

Visas allowing for multiple entries may also be issued with a validity of less than 6 months.

Multiple-entry visa should, in principle, not be issued to first-time applicants.

Under the following circumstances a multiple-entry visa (including for the purpose of transit) shall be issued:

An applicant having proved his integrity and reliability, in particular, through the lawful use of previous uniform visas or visas with limited territorial validity (issued in accordance with Article 25(3) of the Visa Code, see point 8.5.3) issued by any Member State, his economic situation in the country of origin and his genuine intention to leave the territory of the Member States before the expiry of the visa applied for and, who proves the need or justifies the intention to travel frequently and/or regularly, in particular due to his occupational or family status:

- business persons;
- seafarers: it should be noted that for this particular category of persons, "unforeseeable and imperative" reasons are relatively frequent because of unforeseeable changes (due to for instance weather conditions) of schedules of the ship on which the seafarer is to embark, re-embark on or disembark from.

Therefore, seafarers having proved their integrity and reliability, in particular the lawful use of previous uniform visas or visas with limited territorial validity and the holding of a corresponding work contract generally qualify as a category for the issuing of a multiple entry visa with a longer period of validity, for the purpose of transit. As for the period of validity, the length of time of the seafarer's work contract should be taken into account and, if applicable, previous extensions of work contracts. In justified individual cases, the validity of the multiple entry visa may exceed the duration and the extensions of the work contract;

- civil servants engaged in regular official contacts with Member States and European Union institutions;
- representatives of civil society organisations travelling for the purpose of educational training, seminars and conferences;

- family members of citizens of the Union, and family members of third-country nationals legally residing in Member States.

As regards the specific rules applying to categories of persons covered by Visa Facilitation Agreements, see the respective Guidelines set out in [Annex 8](#).

Other categories of persons could be eligible for being granted a multiple entry visa with a long validity, provided that the criteria in relation to integrity and reliability together with the proof of need of frequent or regular travel as indicated above are fulfilled:

- researchers travelling to the Member States for the purpose of carrying out scientific research;
- athletes following regular training or competitions in (a) Member State(s);
- artists regularly performing in the Member States, without affecting the possible need to also obtain a work permit to that end;
- members of the professions;
- professional drivers of lorries , buses and coaches working in international transport;
- persons travelling for the purpose of tourism;
- persons possessing real estate property in the territory of a Member State.

***Recommended best practice with regard to the harmonised practices for the issuing of multiple entry visas in a given location:*** With a view to harmonising practices as part of local Schengen cooperation, Member States should discuss the length of validity of multiple entry visas to be issued to persons eligible for such visas and the progressively increasing validity of such visas in accordance with the below guidelines, which may be adapted to local circumstances:

- persons having lawfully used previous Schengen visas issued within the previous year: a multiple-entry visa with a validity of one year;
- persons having lawfully used a multiple entry Schengen visa, in the previous 24 months: a multiple-entry visas with a validity of a minimum of two and a maximum of five years.

## **8.5 Visa with limited territorial validity**

***Legal basis: Visa Code, Article 25***

### **8.5.1 Issue of a visa with limited territorial validity to persons not fulfilling the entry conditions**

If an applicant does not fulfil the entry conditions or if a Member State under the prior consultation procedure objects to the issuance of a visa, the application shall be refused. When it is nevertheless considered necessary on humanitarian grounds, for reasons of national

interest or because of international obligations to do so, a visa with limited territorial validity may exceptionally be issued.

**Example:** *The UN Secretary General has set up a meeting in Geneva (Switzerland) between a head of state subject to a visa ban and the opposition leader of the third country concerned in order to find a negotiated solution to the political situation in the third country. The Swiss consulate decides to issue a visa for reasons of national interest.*

In the event that it is deemed necessary to issue a new visa during the same period of 180 days to an applicant who, over this 180 days period, has already spent 90 days on the basis of a uniform visa, a visa with limited territorial validity allowing for an additional stay during the 180-day period may be issued.

**Example:** *a Pakistani national stayed in Estonia from 15 March. to 15 June and set up a research project and has since returned to Pakistan. Immediately after his return, the Estonian project manager realises that it is necessary to have the Pakistani scientist come back otherwise the project will be lost.*

In this case a visa with limited territorial validity allowing for a stay of up to 90 days in Estonia may be issued.

### **8.5.2 Issuing a visa with limited territorial validity without carrying out prior consultation**

Generally, no final decision should be taken on a visa application without having carried out prior consultation of (an)other Member State(s), where applicable. However, when the Member State concerned considers it necessary on humanitarian grounds, for reasons of national interest or because of international obligations and if for reasons of urgency, it is considered necessary to issue a visa without carrying out required prior consultation, such a visa should be of limited territorial validity.

**Example:** *A Vietnamese civil servant (for which prior consultation is required) needs urgently to travel to France to replace a colleague who was to participate in high level political negotiations with representatives of the French government.*

Since there is no time to carry out the necessary prior consultation of another Member State the French consulate issues a visa with limited territorial validity.

The territorial validity of the visas referred to in points 8.5.1 and 8.5.2 should in principle be restricted to the territory of the issuing Member State (or the represented Member State, if applicable) and only one entry should be granted.

Exceptionally the validity of such visas may be extended to other Member States than the issuing one, subject to the consent of those Member States. Such consent may be obtained locally or at central level.

**Example:** *an Egyptian national (for which prior consultation is required) has been granted a visa with limited territorial validity in order to attend urgent business meetings in Vienna (Austria), and the visa has been issued without the prior consultation having been carried out.*

Since there are no direct flights to Vienna, the visa holder must fly to Munich (Germany) and therefore the territorial validity of the visa should be limited to Germany and Austria. It is necessary to obtain Germany's consent to this.

**Recommended best practice:** When a Member State considers issuing a visa with limited territorial validity to a person who does not fulfil the entry conditions and needs to obtain the consent of one or more other Member States to extend the validity of the visa to their territories, it is recommended to forward the request by means of the form set out in [Annex 29](#).

Generally a visa should not be issued at the border to a third country national who is subject to prior consultation. In some cases it is, however, decided to issue a visa with limited territorial validity at the border, e.g. to a seafarer who has been recruited with short notice and who is of a nationality for whom prior consultation is required.

If the seafarer will enter the Schengen area in a Member State different from the one where the vessel that he is to sign on to, the consent of the other Member State is necessary to extend the territorial validity of the LTV to cover both Member States.

**Example:** *At Munich Airport an Egyptian seafarer coming from Cairo presents himself at the entry control. The seafarer was recruited at short notice to replace another key member of staff on a ship. The seafarer is to sign on to a vessel in Marseille. Given the better flight connection, the shipping company has booked a flight from Cairo via Munich to Marseille. The vessel the seafarer is to sign on to transports high-quality parts of aircraft produced in Toulouse to be further processed by a company in Germany. The French authorities have notified the German authorities at Frankfurt Airport of the seafarer's arrival by means of the form set out in Annex IX, Part 2, to the Visa Code.*

*As the seafarer was recruited at short notice, he is able to prove that it was not possible for him to apply for a visa at the competent diplomatic mission abroad.*

*In line with Article 22 of the Visa Code, some Member States require prior consultation for Egyptian nationals, but because of the urgency of the matter the consultation procedure cannot be completed in time.*

*As a consequence of the consultation requirement a visa may not be issued to the seafarer at the border pursuant to Article 36 (3) in conjunction with Article 35 (5) of the Visa Code. In exceptional cases a visa with limited territorial validity may be issued in line with Article 25 (1) of the Visa Code.*

*Given the considerable financial importance of the deliveries concerned in the present case it is in the national interest both of Germany and France to ensure that the seafarer can sign on the vessel in Marseille.*

*The visa with the limited territorial validity for Germany and France is issued on the basis of Article 25 (1) (a) (iii) and (2) of the Visa Code and France has given its consent to extending the validity by means of the form announcing the seafarer's arrival (Annex IX, Part 2 of the Visa Code) which already includes the required consent*

**Example:** *The port of Hamburg is informed by the shipping company of the transfer of a Belarus seafarer from one vessel to another vessel. The seafarer will leave a vessel in Hamburg and sign on to a cruise liner in Rotterdam. The reason for the transfer is a need for urgent replacement of a key member of staff in order for the cruise liner to depart from Rotterdam without serious delay.*

*Since the seafarer was transferred at short notice, it was not possible for him to apply for a visa at the competent diplomatic mission abroad.*

*In line with Article 22 of the Visa Code some Member States is require prior consultation for Belarus nationals. Consequently, a visa may not be issued to the seafarer at the border (Article 35 (5) and 36 (3) of the Visa Code).*

*Given the considerable financial damage which would result from the refusal of applying for visa in this case, it is in the national interest both of Germany and the Netherlands to issue a visa.*

*The visa with the limited territorial validity for Germany and the Netherlands is issued on the basis of Article 25 (1) (a) (iii) and (2) of the Visa Code.*

**Recommended best practice** in cases where – despite the general rule that visas should not be issued at the border to third country nationals subject to prior consultation – it is decided to issue a visa with limited territorial validity at the border to a seafarer recruited with short

notice and where it would be necessary to obtain the consent of (an)other Member State(s) to extend the territorial validity of the LTV, the form set out in Annex IX, Part 2, to the Visa Code should be considered as proof of such consent.

### **8.5.3 Issue of a visa with limited territorial validity to a person holding a travel document not recognised by all Member States**

If the applicant holds a travel document that is recognised by one or more, but not all Member States, a visa valid for the territory of the Member States recognising the travel document shall be issued. If the issuing Member State (or the represented Member State) does not recognise the applicant's travel document, the visa issued shall only be valid for that Member State and the visa sticker should be affixed to the uniform format for the separate sheet for affixing visa stickers, see [Annex 24](#).

Such visas may be issued allowing for several entries.

### **8.5.4 Visa not allowing the holder to enter the territory of the Member States**

#### **Airport transit visa**

*Legal basis: Visa Code, Article 26*

It is important to distinguish between transit through the international transit area of an airport (onward journey where the third country national does not leave the international transit area of the airport) and transit via the territory of a Member State albeit limited to an airport (onward journey where the third country national leaves the international transit area of the airport):

#### **8.5.5 Onward journey where the third country national does not leave the international transit area of the airport**

*Example: a Nigerian national travels from Lagos (Nigeria) via Frankfurt (Germany) to Moscow (Russia).*

This person remains in the international transit area of Frankfurt airport and should therefore be issued an airport transit visa.

#### **8.5.6 Onward journey where the third country national leaves the international transit area of the airport**

*Example: a Nigerian national travels from Lagos via Brussels (Belgium) and Paris (France) to Montreal (Canada).*

The flight between Brussels and Paris is an "intra-Schengen" flight and thus this person enters into the area of the Member States in Brussels and the (Belgian) consulate should issue a

uniform visa for the purpose of transit and not an airport transit visa.

**Example:** *A Sri Lankan national travels from Colombo to Paris-Charles de Gaulle airport. From Paris he will continue on a flight to Mexico, leaving from the Paris-Orly airport.*

When changing airports in Paris, the person concerned enters the territory of the Member States and the (French) consulate should therefore issue a uniform visa for the purpose of transit and not an airport transit visa.

### **8.5.7 Number of transits and period of validity**

The number of transits and the period of validity should correspond to the needs of the applicant according to the information provided, which in the case of a single airport transit means the date of the transit plus the ‘period of grace’ of 15 days.

It might exceptionally be decided for reasons of public policy or because of international relations of the Member States not to add the ‘period of grace’, because the issuing Member State needs to know exactly when the person concerned transits through the international transit area of the airport area of the Member States.

If the person concerned transits via airports situated in two different Member States on the outward journey and the return journey, a dual airport transit visa should be granted.

**Example:** *an Eritrean national travels from Asmara (Eritrea) via Madrid (Spain) to Havana (Cuba) and returns to Asmara via Frankfurt (Germany).*

Multiple airport transit visas may be issued to persons who present no risk of illegal migration or threat to security and who have justified their need for frequent airport transits. However, the period of validity of a multiple airport transit visa should not go beyond six months.

## **9. INFORMATION OF CENTRAL AUTHORITIES OF OTHER MEMBER STATES ON THE ISSUING OF A VISA**

### ***Legal basis: Visa Code, Article 31***

A Member State may require that its central authorities be informed of uniform visas or visas with limited territorial validity issued by consulates of other Member States to nationals of specific third countries or to specific categories of such nationals, except in the case of airport transit visas.

The required information should be exchanged among central authorities via the VIS Mail mechanism.

### **When should this information be transmitted?**

Irrespective of the means of transmission, the information on an issued visa should be transmitted to the Member State having requested it without delay and before the visa holder will use the issued visa.

## 10. THE VISA STICKER

The uniform format for the visa sticker is established by Regulation 1683/95, see [Annex 19](#).

### 10.1 Filling in the visa sticker

*Legal basis: Visa Code, Article 27 and Annex VII*

When the visa sticker is filled in, the mandatory entries set out in [Annex 20](#) shall be inserted and the machine-readable zone filled in, as provided for in ICAO document 9303, Part 2. Examples of filled in visa stickers are set out in [Annex 21](#).

National entries in the ‘comments’ section of the visa sticker may be added, see [Annex 22](#). The national comments must not duplicate the mandatory entries. The fact that the purpose for which the visa was applied for is indicated on the visa sticker does not prevent the holder from using a valid multiple entry visa to travel for other purposes.

If the visa applicant does not have a first name and a surname/family name, his single name should be entered into the two corresponding fields (‘first name’ and surname/family name) on the visa sticker so as not to prevent matching of names in the VIS, when applicable, and in the SIS.

All entries on the visa sticker shall be printed, and no manual changes shall be made to a printed visa sticker.

Visa stickers may be filled in manually **only in case of technical force majeure**. No changes shall be made to a manually filled in visa sticker.

**Recommended best practice in the case of technical force majeure preventing printing of visa stickers:** In case the technical problems can be solved within a relatively short time, and if it does not disturb the travel plans of the applicant, it is preferable to postpone the issuing of the visa until the sticker can be printed rather than filling it in manually.

When a visa sticker is filled in manually, the relevant information should be entered into the VIS. If the applicant holds a travel document with no expiry date, the field ‘expiry date’ in the VIS should be filled with a fictitious date 100 years after the date of issuing of the travel document.

### 10.2 Affixing of the visa sticker

*Legal basis: Visa Code, Article 29 and Annex VIII*

The printed visa sticker shall be affixed to the first page of the travel document that contains no entries or stamps.

The sticker shall be aligned with and affixed to the edge of the page of the travel document. The machine-readable zone (MRZ) of the sticker shall be aligned with the edge of the page ([Annex 23](#)).

### **10.2.1 Affixing of the visa sticker in case of non-recognition of the travel document**

Where the issuing Member State does not recognise the applicant's travel document, the sticker should be affixed to the uniform separate sheet for affixing a visa, see [Annex 24](#).

When a visa sticker has been affixed to the separate sheet for affixing a visa, this information shall be entered into the VIS.

### **10.2.2 Affixing of stickers in passports covering several persons**

Individual visa stickers issued to persons who are included in the same travel document should be affixed to that travel document.

Where the travel document in which such persons are included is not recognised by the issuing Member State, the individual stickers should be affixed to the uniform separate sheet for affixing a visa (one sticker per separate sheet), [Annex 24](#).

### **10.2.3 Stamping and signature of the visa**

The stamp of the issuing authorities shall be placed in the 'comments' section in such a manner that it extends beyond the sticker onto the page of the travel document, but it must not prevent the reading of the MRZ. If the issuing authority signs the visa, the signature should be placed in the same manner.

## **10.3 Invalidation of completed visa stickers**

### ***Legal basis: Visa Code, Article 28***

If an error is detected by the issuing consulate on a visa sticker that has not yet been affixed to the travel document, the visa sticker shall be invalidated.

If an error is detected by the issuing consulate after the visa sticker has been affixed to the travel document, the visa sticker shall be invalidated by drawing a cross with indelible ink on the visa sticker and a new visa sticker shall be affixed to a different page.

With regard to the actions to be taken in the VIS, see [Annex 32](#).

**Recommended best practice in case of invalidation of a visa sticker after it has been affixed to the travel document:** the security feature 'latent image effect' as well as the term 'visa' shall be rendered unusable by using a sharp instrument.

## 11. REFUSAL OF A VISA

### *Legal basis: Visa Code, Article 32(1) and Annex VI*

When an application has been considered admissible, the further examination of it can lead to establish that the entry conditions for obtaining a uniform visa or the conditions for obtaining an airport transit visa (ATV) are fulfilled and a uniform visa or an ATV may be issued.

In case the entry conditions are not fulfilled, it could be assessed whether the circumstances justify that a derogation is exceptionally made from the general rule, and a visa with limited territorial validity (LTV) can be issued (see [chapter 8.5.1](#)). If it is not considered justified to derogate from the general rule, the visa shall be refused.

#### **11.1 On which grounds should a visa be refused?**

As a general rule, a uniform visa shall be refused when the examination of the application leads to one or more of the following conclusions:

- a) the applicant has presented a travel document which is false, counterfeit or forged;
- b) the applicant does not provide justification for the purpose and conditions of the intended stay;
- c) the applicant does not provide proof of sufficient means of subsistence, both for the duration of the intended stay and for the return to his country of origin or residence, or for the transit to a third country into which he is certain to be admitted, or is not in a position to acquire such means lawfully;
- d) the applicant has already stayed for 90 days during the current 180-day period on the territory of the Member States on the basis of a uniform visa or a visa with limited territorial validity;
- e) the applicant is a person for whom an alert has been issued in the SIS for the purpose of refusing entry;
- f) the applicant is considered to be a threat to public policy, internal security or public health or to the international relations of any of the Member States, in particular where an alert has been issued in Member States' national databases for the purpose of refusing entry on the same grounds;
- g) does not provide proof of holding adequate and valid travel medical insurance, where applicable;
- h) there are reasonable doubts as to the authenticity of the supporting documents submitted by the applicant or the veracity of their contents, the reliability of the statements made by the applicant or his intention to leave the territory of the Member States before the expiry of the visa applied for.

Particular rules in relation to grounds for refusal of a visa currently apply to family members of EU and Swiss citizens, see [Part III](#).

## **11.2 Should the refusal be notified to the person concerned and should the grounds for the refusal be given?**

***Legal basis: Visa Code, Article 32(2), (3) and (4) and Annex VI***

When refusing a visa to an applicant the consulate must fill in all the relevant field(s) in the standard form for notifying and motivating refusal of a visa substantiating the reason(s) for refusal, and submit it the third-country national concerned, see [Annex 25](#).

This procedure must also be followed when a visa is refused at the external border, see [Part IV](#).

Particular rules in relation to notification and motivation of refusal of a visa currently apply to family members of EU or Swiss citizens, see [Part III](#).

If an airport transit visa (ATV) is refused the appropriate refusal ground should be marked in the standard form and an additional motivation may be added in the "remarks" field of the form, see [Annex 25](#).

***Best practice in relation to a request of information about a SIS alert:*** If a person requests information about the processing of his/her personal data in the SIS and about his/her access rights, the consular staff should provide the person with the coordinates of the competent national authorities, including data protection authorities, where he/she can exercise his/her rights.

## **11.3 Information to be added to the VIS when a visa is refused**

When a decision is taken to refuse a visa, the responsible authority should immediately add the information relating to the refusal to the VIS file, in accordance with Article 12 of the VIS Regulation. This information should include the name of the authority that refused the visa, the place and date of the refusal, and the ground(s) for refusal, which should be one (or more) of the grounds mentioned in Article 32 of the Visa Code and detailed in point 11.1 of this handbook.

## **11.4 Does the person concerned have the right to appeal a negative decision?**

Applicants who have been refused a visa shall have the right to appeal. Appeals shall be conducted against the Member State that has taken the final decision on the application.

When notifying the refusal to the applicant, information regarding the procedure to be followed in the event of an appeal should be given.

If an arrangement on representation between two Member States stipulated that the representing Member State can take the final negative decision on a visa application on behalf

of the represented Member State, possible appeals should be conducted against the representing Member State that took the final decision to refuse the visa.

Particular rules in relation to information on appeal procedures currently apply to family members of EU or Swiss citizens, see [Part III](#).

**Recommended best practice** in relation to the notification and motivation of refusals and the communication of refused applicant's right to appeal:

Member States should endeavour to make the written communication available in the official language of the refused applicant's country of residence or in an official language of the EU institutions, for example in English.

## **12. RETURN OF THE TRAVEL DOCUMENT**

Given that the Visa Code does not contain specific rules relating to the return of the travel document, the contents of this chapter are to be considered as recommended best practices.

The applicant should not be obliged to collect the travel document and other documents to be returned, if any, in person. The applicant may, for instance:

- authorise a third party to collect the travel document, at the consulate/the premises of the external service provider/the honorary consul, as applicable;
- request that the travel document be returned by courier service, at the applicant's expense.

If the travel document is returned via an external service provider, this should be done in a way that does not reveal the decision to the service provider, despite the fact that the person concerned is to countersign reception of the refusal form.

### 13. FILING OF THE APPLICATION FILES

*Legal basis: Visa Code, Article 37 (3)*

#### 13.1 What should be kept in each file?

Files stored physically or electronically should be kept in order for staff to be able to reconstruct, if need be, the background for the decision taken on the application (see also [point 6.16](#)).

Each individual file should contain the application form, copies or originals of relevant supporting documents, a record of checks made and the reference number of the visa issued. A copy of the page of the travel document with the affixed visa sticker may also be kept. If this practice is followed, a copy of each visa sticker should be kept, in cases where several visas are affixed in the same travel document. Copies of other pages of the travel document considered relevant may also be kept.

In case of a negative decision on an application, a copy of the notification of refusal, signed by the applicant (if required) should be kept in the file as well.

#### 13.2 For how long should the files be kept?

Individual application files shall be kept for a minimum of two years from the date of the final decision taken on the application.

Additionally, each Member State shall keep records of all data processing operations within the VIS for one year beginning at the end of the 5-year retention period calculated for each application file in accordance with Article 23 of the VIS Regulation. These records shall include the following categories: reason for accessing the data, the date and time and type of data transmitted, the type of data used for query in the VIS, and the name of the authority entering or retrieving the data, as well as records of the staff duly authorized to enter data in or retrieve data from the VIS.

eu-LISA is in charge of applying the policy of retaining the application data in the VIS for 5 years and thus of deleting these data, as applicable. In addition, data retrieved from the VIS may be kept in national files only when necessary in individual cases in accordance with relevant EU and national legal provisions, including data protection. However, each Member State has a right to keep the data which that Member State entered in the VIS in its national files.

**Recommended best practice** in relation to filing of visa application files: Given the mandatory right of appeal for refused visa applicants, it is recommended that the archived files are as complete as possible and are kept for a period corresponding to the duration of a possible appeal procedure.

### **PART III: SPECIFIC RULES RELATING TO APPLICANTS WHO ARE FAMILY MEMBERS OF EU<sup>12</sup> CITIZENS OR SWISS CITIZENS**

*(This chapter only covers issues of relevance to third-country nationals subject to a visa requirement under Regulation 2018/1806)*

#### **Operational instructions addressed to the consulates of Member States except Switzerland**

***Legal basis: Article 21 of the Treaty on the Functioning of the European Union and Directive 2004/38/EC, Visa Code, Article 1(2)(a) and (b)***

Under Article 21 of the Treaty on the Functioning of the European Union, every EU citizen has the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaty and by the measures adopted to give it effect. These limitations and conditions are primarily set out in Directive 2004/38/EC<sup>13</sup> on the rights of Union citizens and their family members to move freely within the territory of the Member States.

The right of free movement of EU citizens would not have any useful effect without accompanying measures guaranteeing that this right is also given to their families. The Directive therefore extends the right to free movement to family members of EU citizens. The second subparagraph of Article 5(2) of the Directive provides that *'Member States shall grant [family members covered by the Directive] every facility to obtain the necessary visas. Such visas must be issued free of charge as soon as possible and on the basis of an accelerated procedure.'*

Article 21 TFEU and Directive 2004/38/EC prevail over the Visa Code. They represent a *lex specialis* with regard to the Visa Code (*see Article 1(2)(a) of the Visa Code*) so the Visa Code fully applies where the Directive does not provide an explicit rule but refers to general *'facilities'*<sup>14, 15</sup>.

This means that the provisions of the Visa Code that negatively impinge on the rights of family members of EU citizens specifically protected by the Directive do not apply (*e.g. the requirement set by Article 12 (c) of the Visa Code according to which a travel document should not have been issued more than 10 years prior to the visa application because it only requires the travel document to be valid*).

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<sup>12</sup> By virtue of the EEA Agreement, Directive 2004/38/EC applies also in relation to the EEA Member States (*Norway, Iceland and Liechtenstein*). The derogations to the Directive, foreseen in the EEA Agreement, are not relevant for the visa procedure. Consequently, where this part refers to the EU citizen, it must be understood as referring to EEA citizens as well, unless specified otherwise.

<sup>13</sup> OJ L 158, 30.4.2004, page 77.

<sup>14</sup> These guidelines are without prejudice to national legislation and administrative rules that Member States are obliged to adopt in order to transpose Directive 2004/38/EC.

<sup>15</sup> Member States decided to apply the same *lex specialis* to family members of Swiss citizens. Consequently, where this part refers to EU citizens, it must be understood as referring to Swiss citizens as well, unless specified otherwise.

This part of the handbook provides the consulates with operational instructions on the particular rules relating to visa applicants who are family members of EU citizens in accordance with Article 1(2)(a) and (b) of the Visa Code. It aims to cover the most common situations but is not exhaustive. On the application of other aspects of Directive 2004/38/EC, see Commission Communication COM(2009) 313 final<sup>16</sup>.

**Point 1:** how to assess whether the Visa Code should be applied in full or whether the specific rules laid down in the Directive apply.

**Point 2:** the specific rules on exemption from the visa requirement of third-country nationals who are family members of EU citizens.

**Point 3:** the specific derogations from the general rules of the Visa Code that are to be applied when it is ascertained (*under point 1*) that the visa applicant falls under the Directive and that there is no exemption from the visa requirement (*under point 2*).

## 1. DOES DIRECTIVE 2004/38/EC APPLY TO THE VISA APPLICANT?

This point provides instructions for assessing whether the specific rules relating to visas laid down in the Directive apply.

If any of the questions below are answered in the negative, the applicant is not entitled to the specific treatment under the Directive (*cf. point 4.11*).

If, on the contrary, the three questions are answered in the affirmative, it has been established that the specific rules laid down in the Directive indeed apply to the visa applicant. Consequently, the guidelines in points 2 and 3 apply.

### **Question 1: Is there an EU citizen from whom the visa applicant can derive any rights?**

Third-country nationals who are family members of EU citizens derive their rights under the Directive from EU citizens, the holders of the primary status. In principle, they do not enjoy any autonomous right to move and reside freely<sup>17</sup>.

The very first test is therefore whether EU citizens find themselves in a situation covered by the Directive.

In principle, the Directive applies only to those EU citizens who travel to a Member State other than the Member State of their nationality or already reside there (*i.e. the EU citizen exercises or has already exercised his right of free movement*).

The Directive offers facilitations to:

- EU citizens wishing to leave one Member State to travel to another Member State (*Article 4(1)*);
- EU citizens entering the host Member State (*Article 5(1)*);

<sup>16</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0313:FIN:EN:PDF>

<sup>17</sup> This is without prejudice to individual rights granted by EU law, in particular by the Schengen rules or by the Long Term Directive 2003/109/EC.

- EU citizens residing in the host Member State for a short time (*Article 6(1)* – *this includes tourist travel*);
- EU citizens settled in the host Member State (*Article 7(1)*); and
- EU citizens residing permanently in the host Member State (*Article 16(1)*); or
- frontier workers who pursue an activity in a Member State in which they do not reside.

EU citizens residing in the Member State of their own nationality do not normally benefit from the rights granted by the Directive (as there is no element of free movement). There are several exemption:

1) dual nationals – persons with dual nationality (*nationality of the Member State of residence and another Member State*) whether by birth or by naturalisation are covered by EU law on free movement of EU citizens provided they have exercised free movement residence rights in the Member State of residence of which they hold the nationality, while also retaining their nationality of origin. As ruled by the Court of Justice in case C-165/16 *Lounes*, the rights of their non-EU family members shall be equivalent to those provided in the Directive.

2) in line with the case-law of the Court of Justice, the application of EU free movement law extends to EU citizens who return to their Member State of nationality after having resided in another Member State, as well as to those EU citizens who have exercised their right to free movement in another Member State without establishing their residence (settling) there – for example by providing services in another Member State.

In such situations, the Directive does not apply as such, but only *by analogy*. This means that the applicable rules should not be more strict than those provided for by the Directive for granting a derived right of residence to a third-country national who is a family member of an EU citizen who has exercised his right of freedom of movement by settling in a Member State other than the Member State of which he is a national.<sup>18</sup>

For further information on these issues, see Commission Communication COM(2009) 313 final<sup>19</sup>.

**Examples:**

- *French national residing in Cyprus travels to Italy – the Directive applies.*
- *Czech national living in the Czechia travels (or wishes to travel) to Sweden – the Directive applies.*
- *Hungarian national living in Bolivia travels to Poland – the Directive applies.*
- *Polish national living in Bolivia travels to Poland – the Directive does not apply.*
- *Latvian national residing in Greece returns to Latvia – the Directive applies by analogy.*

**Question 2: Does the visa applicant fall under the definition of ‘family member’?**

<sup>18</sup> Judgment of the Court of Justice in case C-456/12 *O and B*.

<sup>19</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0313:FIN:EN:PDF>

‘Core’ family members have an automatic right of entry and residence, irrespective of their nationality. Their right of entry is derived from the Directive and the national transposition measures may restrict neither these rights, nor the scope of the term ‘core’ family members.

The following persons are defined in Article 2(2) of the Directive as ‘core’ family members:

- the spouse<sup>20</sup>;
- the partner with whom the EU citizen has contracted a registered partnership, on the basis of the legislation of any Member State, if the legislation of the host Member State treats registered partnership as equivalent to marriage;
- the direct descendants who are under the age of 21 or are dependant as well as those of the spouse or partner as defined above; or
- the dependant direct relatives in the ascending line and those of the spouse or partner as defined above.

In addition to persons defined in Article 2(2) of the Directive, the Court of Justice ruled in case C-200/02 *Zhu and Chen* that third-country nationals who are primary carers of minor EU citizens are also beneficiaries of the Directive (*such parents are not dependent on the minor EU citizen, but the minor EU citizen is dependent on such parents*).

Primary carer(s) of dependent EU citizens can also derive rights from Article 12(3) of the Directive if the EU citizen is studying in the host Member State and residence of primary carer(s) is required to allow the student to study effectively<sup>21</sup>.

In such cases, case-law clarified that minor EU citizens enjoy full free movement rights, despite the fact that they cannot decide for themselves where to reside or where to travel. Such decisions are taken by their parents/primary carers who have the rights of custody of the EU child. Account must always be taken of the best interests of the child, which should be a primary consideration, as required by the United Nations Convention on the Rights of the Child of 20 November 1989.

In order to maintain the unity of the family in a broad sense, Member States must also facilitate entry and residence of so-called ‘extended’ family members of EU citizens (*for more details, see Commission Communication COM(2009) 313 final*<sup>22</sup>).

The following persons are defined in Article 3(2) of the Directive as ‘extended’ family members:

- any other (*i.e. those not falling under Article 2(2) of the Directive*) family members who are:
  - dependants;
  - members of the household of the EU citizen;

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<sup>20</sup> The Court of Justice ruled in case C-673/16 *Coman* that Member States cannot refuse entry and residence to spouses who contracted a marriage between persons of the same sex in another Member State on the ground that the law of the host Member State does not recognise such marriages.

<sup>21</sup> Similar rules apply with regard to parents of EU citizens whose right of residence is based on Article 10 of Regulation (EU) No 492/2011 and relevant case law (*see case C-529/11 Alarape for more details*).

<sup>22</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0313:FIN:EN:PDF>

- strictly require the personal care by the EU citizen on serious health grounds; or
- partners with whom the EU citizen has a durable relationship, duly attested.

Article 3(2) of the Directive stipulates that ‘extended’ family members have the right to have their entry facilitated in accordance with national legislation. In contrast with ‘core’ family members, ‘extended’ family members do not have an automatic right of entry. Their right of entry (*and the rights related to an entry visa*) is derived from the national legislation transposing the Directive where the consulates should find detailed rules on this category of visa applicants.

In accordance with Article 3(2) of the Directive, Member States have a certain degree of discretion in laying down criteria to be taken into account when deciding whether to grant the rights under the Directive to ‘extended’ family members. However, Member States do not enjoy unrestricted liberty in laying down such criteria. In order to maintain the unity of the family in a broad sense, the national legislation must provide for a careful examination of the relevant personal circumstances of the applicants concerned, taking into consideration their relationship with the EU citizen or any other circumstances, such as their financial or physical dependence, as stipulated in Recital 6 of the Preamble to the Directive.

For further information on these issues, see Commission Communication COM(2009) 313 final<sup>23</sup>.

### **Question 3: Is the visa applicant accompanying or joining the EU citizen?**

The Directive seeks to facilitate and promote free movement of EU citizens. It does not apply to mobility of the family members if there is no link to a mobile EU citizens, for example when the family member travels alone to a Member State in which the EU citizen does not reside and will not travel to.

Article 3(1) of the Directive stipulates that the Directive applies only to those family members, as defined above, who accompany or join the EU citizens who move to or reside in a Member State other than that of which they are a national. The Directive does not make the rights of family members conditional upon them residing ‘with’ the EU citizen – they need to reside (*or travel to*) a Member State in which the EU citizen resides (*or will travel to*).<sup>24</sup>

For further information on these issues, see Commission Communication COM(2009) 313 final<sup>25</sup> and point 4.7 c) below.

#### ***Examples where the family member accompanies (i.e. travels together with) an EU citizen:***

- *French national living in Ireland travels together with Pakistani spouse to Italy – the Directive applies.*
- *Czech national living in Czechia travels together with Russian spouse to Sweden – the Directive applies.*
- *Slovak national living in Romania travels together with Burmese spouse to Slovakia –*

<sup>23</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0313:FIN:EN:PDF>

<sup>24</sup> Judgment of the Court of Justice in case 267/83 *Diatta*

<sup>25</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0313:FIN:EN:PDF>

*the Directive applies (by analogy) as the EU citizen is returning to the Member State of nationality.*

- *Spanish national living in Indonesia travels with Afghan spouse to Hungary – the Directive applies.*

***Examples where the family member joins (i.e. travels later than) an EU citizen:***

- *Nigerian national travels to join her French spouse residing in Spain – the Directive applies.*
- *Maltese national living in Malta travels to Sweden where his Russian spouse wants to join him later – the Directive applies.*
- *Estonian national living in Bulgaria with a Peruvian spouse travels to Estonia where her spouse wants to join her later – the Directive applies by analogy.*

**2. CAN DIRECTIVE 2004/38/EC EXEMPT EU CITIZEN FAMILY MEMBERS FROM THE VISA REQUIREMENT?**

This point provides for the specific derogations from the visa requirement that apply when it is ascertained that the visa applicant falls under the Directive (*see point 1 – questions 1, 2 and 3*).

The Directive provides for a visa exemption rule that is specifically bound to a particular type of residence card.

It is therefore essential that consulates properly identify the relevant residence cards.

**2.1 Relevant residence cards**

Article 5(2) of the Directive provides that possession of a valid residence card referred to in Article 10 of the Directive exempts third-country family members from the visa requirement.

*‘Article 10’ residence cards* are issued to family members of those EU citizens who have moved to a Member State other than that of their nationality and therefore fall under one of the categories defined in point 1 above (*question 1*).

The same visa exemption must also be extended to those third-country family members who hold a valid permanent residence card issued under Article 20 of the Directive (*replacing the 5-year residence card issued under Article 10 of the Directive*).

***Examples:***

- *German ‘Article 10’ residence card issued to the Chinese spouse of a Slovak citizen is relevant under Article 5(2) of the Directive.*
- *Dutch ‘Article 20’ permanent residence card issued to the Moroccan spouse of a Belgian citizen is relevant under Article 5(2) of the Directive.*

To be relevant under Article 5(2) of the Directive, residence cards or permanent residence cards do not have to be of a specific format or do not have to bear a particular title<sup>26</sup>.

However, residence cards relevant under Article 5(2) of the Directive exempt their holders from the visa requirement only when they travel to the host Member State together with EU citizens or are joining EU citizens there (see further Schengen specific rules on visa exemption in [point 2.3](#)).

## 2.2 Non-standard residence cards that are nevertheless relevant

As described in question 2 of point 1, the Directive applies primarily to family members falling under Article 2(2) and 3(2) of the Directive. Such family members are issued with ‘Article 10’ residence cards or ‘Article 20’ permanent residence cards.

In certain situations, family members finding themselves in a different situation can still be issued with a residence card that is relevant under Article 5(2) of the Directive and exempt their holders from the visa requirement, as Article 10 and Article 20 residence cards do.

- a) residence cards issued to ‘Zhu and Chen parents’ (see question 2 of point 1); and
- b) residence cards issued to family members of EU citizens who have returned to the Member State of their nationality (see question 1 of point 1).

### Residence cards that are not relevant:

Any other residence cards issued to family members of EU citizens do not exempt their holders from the visa requirement under Directive 2004/38/EC.

Typically, the most common type of residence card issued to family members of EU citizens that is not relevant under Article 5(2) of the Directive are residence cards issued under national legislation concerning family reunification with own nationals (*who have not exercised the right of free movement*).

### **Example:**

*Finnish residence card issued to the Libyan spouse of a Finnish citizen living in Finland.*

Some Member States have decided to issue family members of their own nationals residence cards issued under the Directive. Other Member States have considered that this complicates their assessment of whether the residence card held by the family member concerned is relevant under the Directive or not<sup>27</sup>. Where the residence card is not relevant under the Directive – and where it does not exempt the holder from the visa requirement under the Schengen Borders Code (*Article 2(16)*) – the family member concerned should apply for an entry visa in accordance with the applicable rules.

<sup>26</sup> Notwithstanding the obligation of Member States to issue residence cards under the Directive with the specific title indicated by Article 10 of the Directive.

<sup>27</sup> The situation where the presented residence card is not relevant under the Directive in principle cover only situations where third-country family members accompany or join an EU citizen who is national of the country that issued the residence card.

## 2.3 Visa exemption under the Schengen Borders Code

In addition, third-country family members holding a valid residence document issued by a Member State applying the Schengen *acquis* in full may also be exempted from the visa requirement under Article 6 of the Schengen Borders Code, read in conjunction with Article 2 point 16 of the Schengen Borders Code (see [Annex 2](#)).

Residence cards issued by Schengen Member States to family members of EU citizens in accordance with Article 10 or 20 of Directive 2004/38/EC exempt their holders from the visa requirement under the Schengen Borders Code, even if they travel alone.

Residence cards issued to family members of EU citizens under national legislation concerning family unification with own nationals can also exempt their holders from the visa requirement under the Schengen Borders Code

In any case, the more favourable provisions should apply.

### **Examples:**

- *A Slovak citizen resides with her Chinese spouse in Germany. They travel to France. As the Chinese spouse has a German residence card issued under Article 10 of the Directive, there is no need for an entry visa, both under the Directive or the Schengen Borders Code.*
- *A German citizen resides with his Chinese spouse in Germany. They travel to Spain. As the Chinese spouse holds a German residence permit issued under national law by a Schengen Member State (note that this card is not relevant under Article 5(2) of the Directive), there is no need for an entry visa under the Schengen Borders Code.*
- *A Slovak citizen resides with her Chinese spouse in Romania. They travel to France. As the Chinese spouse has a Romanian residence card issued under Article 10 of the Directive, he is exempted from the visa requirement under the Directive (but not under the Schengen Borders Code as Romania does not yet apply the Schengen *acquis* in full).*
- *A Slovak citizen resides with his Chinese spouse in Ireland. The Chinese spouse holding a residence card, issued by Ireland under Article 10 of the Directive, travels alone to France. As she travels alone, she needs to apply for a visa to enter France*

## 3. TERRITORIAL COMPETENCE FOR VISA APPLICATIONS BY THIRD-COUNTRY FAMILY MEMBERS OF EU CITIZENS

Articles 6 and 7 of the Visa Code govern consular territorial competence, i.e. the conditions under which visa applicants can lodge their applications in a particular EU and non-EU country.

The rules of Articles 6 and 7 of the Visa Code apply to all visa applicants, regardless of whether they are family members of EU citizens or not. However, the Directive, as interpreted by the Court of Justice, requires certain adjustments in relation to applications lodged by family members in countries with which they have no link or where the link is irregular.

Given the privileges third-country family members of EU citizens enjoy, consulates must carry out the test to identify whether the applicant is a beneficiary of the Directive before applying Articles 6 and 7 of the Visa Code.

### 3.1 Article 6

The Directive requires Member States to grant every facility to third-country family members applying for an entry visa but this obligation does not require Member States to accept visa applications made by third-country family members in countries in which they are not lawfully resident (*for example, if they do not hold a valid residence document issued by that country or are not entitled to one*) or lawfully present. This is reflected in the structure of Article 6, notably in paragraph 2.

Article 6 of the Visa Code cannot be used to automatically refuse to accept the visa application – consulates may refuse to accept a visa application pursuant to Article 6 if the justification provided by the visa applicant for lodging the application at that consulate is considered insufficient.

### 3.2 Article 7

Applications lodged by third-country family members in an EU Member State are governed by Article 7 of the Visa Code.

However, the Directive, as interpreted by the Court of Justice, precludes Member States from refusing to accept their visa applications on the grounds that the visa applicant:

- does not (yet) hold a valid residence card.

Under the Directive, the right of entry and residence is bound exclusively to whether or not the conditions of the Directive are met – residence cards have only declaratory value and cannot serve as source of rights (*see case C-325/09 Dias for more details*). Moreover, under Article 10(1) of the Directive Member States have up to six months to issue the residence card.

- resides in the Member State concerned lawfully, but entered in an irregular manner.

Rights of family members under the Directive cannot be withdrawn on the grounds that they have entered the country in breach of rules or reside there in an irregular manner (*see case C-459/99 MRAX for more details*).

Against this background, Article 7 of the Visa Code cannot be invoked to refuse to accept visa applications submitted by family members of EU citizens in an EU Member State.

## 4. SPECIFIC DEROGATIONS FROM THE GENERAL RULES OF THE VISA CODE

This point provides for operational instructions concerning the specific derogations from the general rules of the Visa Code that are to be applied when it has been ascertained that the visa applicant falls under the Directive and that there is no exemption from the visa requirement.

These specific derogations are not exhaustive.

#### **4.1 Visa fee**

No visa fee can be charged.

#### **4.2 Outsourcing of the collection of applications**

As family members should not pay any fee when submitting the application, they cannot be obliged to obtain an appointment via a premium call line or via an external provider whose services are charged to the applicant (*service fees*). Family members must be allowed to lodge their application directly at the consulate without any costs. This possibility must be genuine and effective.

If an appointment system is nevertheless in place (*either for the external provider or for a meeting at the consulate*), separate call lines (*at ordinary local tariff*) to the consulate should be made available to family members respecting standards comparable to those of ‘premium lines’, i.e. the availability of such lines should be comparable to those in place for other categories of applicants and an appointment must be allocated without delay.

Where family members decide not to make use of their right to lodge their application directly at the consulate but to use the extra services, they should pay for these services. If applicable, service fees must duly respect the requirements of Article 17(4) of the Visa Code.

In any event, external providers provide their services under the responsibility of the Member State that contracted them. Member States are particularly responsible for the quality of information provided by external service providers on their websites and when communicating with the general public. The information provided on the websites must be comprehensive, correct and easily accessible.

#### **4.3 Granting every facility**

Member States shall grant third-country family members of EU citizens falling under the Directive every facility to obtain the necessary visa. This notion must be interpreted as ensuring that Member States take all appropriate measures to ensure fulfilment of the obligations arising from the right of free movement and afford to such visa applicants the best conditions to obtain the entry visa.

#### **4.4 Processing time**

The visas must be issued as soon as possible and on the basis of an accelerated procedure and the procedures put in place by Member States (*with or without outsourcing*) must make it possible to distinguish between the rights of a third-country national who is a family member of an EU citizen and those of other third-country nationals. The former must be treated more favourably than the latter.

Processing times for a visa application lodged by a third-country national who is a family member of an EU citizen covered by the Directive going beyond 15 days should be exceptional and duly justified.

#### **4.5 Types of visa issued to family members of EU citizens (including those intending to stay for more than 90 days in any 180-day period)**

Article 5(2) of the Directive provides that third-country nationals who are family members of EU citizens may only be required to have an entry visa in accordance with Regulation (EC) No 539/2001.

Family members' right to stay is derived from the right of the EU citizen. Member States shall issue short stay visas to non-EU family members of mobile EU citizens<sup>28</sup>.

To reflect the privileged situation of third-country family members of EU citizens, Member States should not take into consideration the family member's economic situation in his or her country of origin or his or her genuine intention to leave the territory of the Member States before the expiry of the visa applied for, when applying Article 24(2) of the Visa Code regarding the issuing of a multiple-entry visa.

#### **4.6 Burden of proof**

The burden of proof applicable in the framework of the visa application under the Directive is twofold:

- 1) Firstly, it is up to the visa applicant to prove that he is a beneficiary of the Directive.

*He must be able to provide documentary evidence described below in point 4.7 as he must be able to present evidence to support his claim. If he fails to provide such evidence or provides no evidence at all, the consulate may conclude that the applicant is not entitled to the specific treatment under the Directive.*

- 2) Secondly, once the status of the beneficiary of the Directive is satisfactorily established, the national authorities may refuse the visa application:
  - a. on the grounds that the visa applicant is a genuine, present and sufficiently serious threat to public policy, public security or public health; or
  - b. in the event of abuse or fraud.

*In the cases mentioned in paragraph 2), the burden of proof lies with the national authorities as they must be able to present evidence to support their claim that the visa applicant (who has presented sufficient evidence to attest that he meets the criteria in the Directive) should nevertheless not be issued with an entry visa.*

*The authorities must be able to build a convincing case while respecting all the safeguards of the Directive. The decision refusing the visa application on grounds of public policy, public security or public health or on grounds of abuse or fraud must be notified in writing, fully justified (e.g. by listing all legal and material aspects taken into account when concluding that a marriage is a marriage of convenience or that a presented birth certificate is fake).*

#### **4.7 Supporting documents**

In order to prove that the applicant has the right to be issued with an entry visa under the Directive, he must establish that he is a beneficiary of the Directive.

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<sup>28</sup> See case C-157/03 *Commission v Spain*, point 34.

The status of beneficiary of the Directive is established by presenting documents relevant for the purposes of the three questions referred to in point 1, i.e. proving that:

a) there is an EU citizen from whom the visa applicant can derive any rights

The burden of proof is discharged by presenting evidence as regards the EU citizen's identity and nationality (*e.g. a valid travel document*)<sup>29</sup>.

b) the visa applicant is a family member of such an EU citizen

The burden of proof is discharged by presenting evidence as regards the family member's identity (*e.g. a valid travel document*), their family ties (*e.g. a marriage certificate, birth certificate, etc.*) and, if applicable, proof of meeting the other conditions of Articles 2(2) or 3(2) of the Directive (*e.g. evidence relating to dependency, serious health grounds, durability of partnerships, etc.*).

c) the visa applicant will accompany or join an EU citizen in the host Member State.

#### 4.7.1 Joining an EU citizen

If the EU citizen is already resident or present in the host Member State, the burden of proof is discharged by presenting evidence of the EU citizen's residence or presence in the host Member State (*e.g. a valid registration certificate issued by the host Member State*). The level of evidence depends on the nature of the EU citizen's residence in the host Member State:

- for residence shorter than three months (*Article 6(1) of the Directive*), EU citizens do not have to meet any requirements and do not have to possess any residence document;
- for residence of more than three months (*Article 7(1) of the Directive*), EU citizens have to meet the conditions the Directive attaches to the right of residence and Member States may require them to possess registration certificates;
- for the right of permanent residence (*Article 16(1) of the Directive*), EU citizens do not have to meet any additional requirements but Member States may require them to possess documents certifying permanent residence.

Please note that some Member States do not operate any registration scheme or make it voluntary to register. Consequently, EU citizens residing in these Member States cannot be required to have a registration certificate. In any event, residence documents cannot be a prerequisite for providing a visa to a family member. They can, however, constitute one means of proving that the EU citizen is resident in the Member State.

#### 4.7.2 Accompanying an EU citizen

This is the case when the EU citizen is not yet resident or present in the Member State of destination but will travel there in the future.

Given that there can be no principled evidence of the EU citizen's residence or presence in the Member State of destination (*as the move will take place later*), Member States cannot oblige

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<sup>29</sup> The passport should be valid at the day of actual travel. Please note that under the terms of the Council of Europe's European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe (<http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/025>), nationals of participating Member States can travel with a travel document that has expired.

visa applicants to provide ‘evidence’ of future travel (*requirements relating to travel or accommodation arrangements do not amount to proof of future travel – such arrangements only show that travel or accommodation was paid for in advance, not that the travel will actually happen*).

Against this background, Member States should merely ask for confirmation that the EU citizen will travel to the Member State of destination and process the visa application under the assumption that the visa applicant is a beneficiary of the Directive<sup>30</sup>.

The veracity of this assumption can be verified later at the border when the visa holder seeks entry. In accordance with Article 30 of the Visa Code, border guards can require such visa holders to provide evidence that there actually is an EU citizen resident or present in the Member State of destination. In most cases, this will be complied with as a matter of course when the couple travels together. Failure to provide such evidence can result in refusal of entry. This ability to check is without prejudice to the Schengen Borders Code which allows border guards to check whether non-EU nationals are in possession of a valid visa (*Article 6(1)(b) of the Schengen Borders Code*).

#### **4.7.3 General rules**

In addition to the rules on supporting documents set out above, several issues should be highlighted:

- 1) The only requirement relating to travel documents of EU citizens and their family members is that they have to be valid (*Article 5(1) of the Directive*). Member States cannot refuse a visa application on the grounds that the travel document:
  - does not have a certain future validity (*Article 12(a) of the Visa Code*) – it is enough that the travel document is valid on the day of entry into the territory;
  - does not have a certain number of free pages (*Article 12(b) of the Visa Code*); or
  - is an old document without the latest security features (*Article 12(c) of the Visa Code*).
- 2) It is an established principle of EU law in the area of free movement that visa applicants have the right to choose the documentary evidence by which they wish to prove that they are covered by the Directive (*i.e. evidence of the family link, dependency, etc.*). Member States may, however, ask for specific documents (*e.g. a marriage certificate as the means of proving the existence of marriage*), but should not refuse other means of proof. For example, presenting a marriage certificate is not the only acceptable means of establishing family ties.
- 3) A Member State may require that the relevant documents be translated where the original document is drawn up in a language that is not understood by the authorities of the Member State concerned. If there are doubts as to the authenticity of the document (*e.g. concerning the issuing authority and the correctness of the data appearing on a document*), a Member State may ask for the documents to be notarised, legalised or verified. However, the suspicion must be specific in that it concerns a specific document

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<sup>30</sup> Where the visa applicant voluntarily provides evidence related to travel or accommodation arrangements and such evidence is found unconvincing or fraudulent by the national authorities, such finding can be taken into account in deciding whether the application is not fraudulent (*see point 4.11*).

of an individual applicant as it would be disproportionate to systematically require verification and/or legalisation of all supporting documents in all cases.

- 4) Family members may be required to provide additional documents only in the context of:
  - determining the Member State competent for examining and deciding on an application under Article 5 of the Visa Code; or
  - determining territorial competence for visa applications under Articles 6 and 7 of the Visa Code in order to establish their links with the country in which they lodge their entry visa applications.
- 5) Supporting documents, information and proof pursuant to the Visa Code that family members of EU citizens do not have to provide:
  - documents indicating the purpose of the journey, envisaged by Article 14(1)(a) of the Visa Code<sup>31</sup>;
  - documents relating to accommodation (*or proof of sufficient means to cover his accommodation*), envisaged by Article 14(1)(b) of the Visa Code;
  - documents indicating that they possesses sufficient means of subsistence both for the duration of the intended stay and for the return to their country of origin or residence, or for the transit to a third country into which they are certain to be admitted, or that they are in a position to acquire such means lawfully, in accordance with Article 6(1)(c) and (3) of the Schengen Borders Code, envisaged by Article 14(1)(c) of the Visa Code;
  - information enabling an assessment of their intention to leave the territory of the Member States before the expiry of the visa applied for, envisaged by Article 14(1)(d) of the Visa Code;
  - proof of sponsorship or private accommodation, envisaged by Article 14(4) of the Visa Code; or
  - proof that they are in possession of adequate and valid travel medical insurance to cover any expenses which might arise in connection with repatriation for medical reasons, urgent medical attention and/or emergency hospital treatment or death, during their stay(s) on the territory of the Member States, envisaged by Article 15 of the Visa Code.

These facilities are further reflected in the exemption for family members of EU citizens from filling in the following fields of the visa application form:

Field 19: *'current occupation'*;

Field 20: *'employer and employer's address and telephone number. For students, name and address of educational establishment'*;

Field 31: *'surname and first name of the inviting person(s) in the Member State(s). If not applicable, name of hotel(s) or temporary accommodation(s) in the Member State(s)'*;

Field 32: *'Name and address of inviting company/organisation'*;

Field 33: *'Cost of travelling and living during the applicant's stay'*.

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<sup>31</sup> Cf. case C-109/01 Akrich for further details.

6) As regards dependency, according to the case-law of the Court,<sup>32</sup> the status of 'dependent' family member is the result of a factual situation characterised by the fact that material support is provided by the EU citizen or by his spouse or partner.

The status of dependent family member does not presuppose a right to maintenance. There is no need to examine whether the family members concerned would in theory be able to support themselves, for example by taking up paid employment.

In order to determine whether family members are dependent, it must be assessed in the individual case whether, having regard to their financial and social conditions, they require material support to meet their essential needs in their country of origin or the country from which they came at the time when they applied to join the EU citizen (*i.e. not in the host Member State where the EU citizen resides*).

The Directive does not lay down any requirement as to the minimum duration of the dependency or the amount of material support provided, as long as the dependency is genuine and structural in character.

Dependent family members are required to present documentary evidence that they are dependent. Evidence may be adduced by any appropriate means, as confirmed by the Court. Where the family members concerned are able to provide evidence of their dependency by means other than a certifying document issued by the relevant authority of the country of origin or the country from which the family members are arriving, the host Member State may not refuse to recognise their rights. However, a mere undertaking from the EU citizen to support the family member concerned is not sufficient in itself to establish the existence of dependence.

For further information, see Commission Communication COM(2009) 313 final<sup>33</sup>.

#### **4.8 Recognition or registration of marriages contracted abroad**

As stressed in the 2009 Commission guidelines, marriages validly contracted anywhere in the world must in principle be recognised for the purpose of applying the Directive.

This principle also applies to the issuance of entry visas to third-country family members of EU citizens who, as confirmed by the Court of Justice<sup>34</sup>, derive this right from the family ties only.

By analogy with the closed list of supporting documents third-country family members of EU citizens have to present with their applications for a residence card under Article 10(2) of the Directive, third-country family members applying for an entry visa under the Directive have to present a '*document attesting to the existence of a family relationship*'. This means that they cannot be required to have the document or relationship first registered in the Member State of the EU citizen's nationality.

Requiring such registration amounts to an undue obstacle to the exercise of the right of free movement as it is likely to significantly delay the processing of some applications or even to make it impossible in some cases, given that some Member States do not have a system for registering foreign marriages.

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<sup>32</sup> Cf. cases 316/85 Lebon and C-1/05 Jia.

<sup>33</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0313:FIN:EN:PDF>

<sup>34</sup> Case C-503/03 *Commission v Spain*.

#### 4.9 Refusal to issue a visa

Once the visa application has been accepted, a family member may be refused a visa exclusively on the following grounds:

1. the visa applicant fails to demonstrate that he is covered by the Directive on the basis of the visa application and attached supporting documents under point 4.7 (*i.e. it is clear that the reply to at least one of the three questions referred to above is negative*);
2. the national authorities demonstrate that the visa applicant is a genuine, present and sufficiently serious threat to public policy, public security or public health; or
3. the national authorities demonstrate that there has been abuse or fraud.

A visa may not be refused on the sole ground that the applicant is a person for whom an alert has been entered into the SIS for the purpose of refusing entry into the territory of the Member States<sup>35</sup>. Before refusing to issue a visa where there is an alert in the SIS, the Member State that decides on the visa must in any event verify whether the person concerned represents a genuine, present and sufficiently serious threat to public policy, and public security<sup>36</sup>.

A visa may also not be refused on the sole ground that a Member State does not recognise the family member's passport. Although according to Article 25(3)(2) of the Visa Code it is in this case for a Member State to decide whether to issue a visa, if the Member State does not recognise the passport, the visa has to be issued on a separate sheet.

For further information, see Commission Communication COM(2009) 313 final<sup>37</sup>.

#### 4.10 Notification and motivation of a refusal

Article 30 of the Directive provides that family members must be notified in writing of the refusal. Irrespective of the mandatory notification and motivation of refusals as provided by the Visa Code, refusal to issue a visa to a family member of an EU citizen must always be fully reasoned and list all the specific factual and legal grounds on which the negative decision was taken, so that the person concerned may take effective steps to ensure his defence<sup>38</sup>.

The refusal must also specify the court or administrative authority with which the person concerned may lodge an appeal and the time limit for the appeal. This must also be complied with in the case of representation agreements.

Forms may be used to notify a negative decision but the motivation given must always allow for a full justification of the grounds on which the decision was taken. Indicating one or more of several options by only ticking the boxes in the standard form set out in Annex VI to the

<sup>35</sup> Cases C-503/03 *Commission v Spain* and C-33/07 *Jipa*.

<sup>36</sup> Similarly, Article 27(2) of the Directive stipulates that previous criminal convictions shall not in themselves constitute grounds for taking such measures. As the Court ruled (*case C-50/06 Commission v Netherlands*), a previous criminal conviction can be taken into account only in so far as the circumstances which gave rise to that conviction are evidence of personal conduct constituting a present threat to the requirements of public policy.

<sup>37</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0313:FIN:EN:PDF>

<sup>38</sup> Cases 36/75 *Rutili* and T-47/03 *Sison*.

Visa Code is therefore not sufficient in the case of refusal to issue a visa to a family member of an EU citizen.

#### **4.11 ‘Switching’ procedure**

Visa applications lodged by third-country national family members of EU citizens under the Directive must be processed in accordance with the rules of the Directive.

Member States cannot refuse to process visa applications made by third-country national family members of EU citizens under the Directive on the sole ground that the particular visa applicant may also hold the nationality of an EU Member State (*or be ex lege entitled to such nationality*), where the only proof of nationality submitted with the visa application is the travel document issued by a third country.

When the consulate - after having established that the particular visa applicant is not a beneficiary of the Directive - concludes that the visa application is to be refused this must be done in accordance with the procedure described in [points 4.9](#) and [4.10](#).

When the visa application has been refused formally, the consulate may switch the visa application to the Visa Code and invite the visa applicant to provide the necessary missing documents and pay the fee, as applicable. It is not possible simply to decide to ‘switch’ to applying the general provisions under the Visa Code without formally refusing the initial application in accordance with the rules of the Directive.

### **5. ABUSE AND FRAUD IN ENTRY VISA APPLICATIONS**

Detailed guidance – including operational guidance – on how to tackle abuse and fraud is given in the 2009 Commission guidelines and, in particular, in the Handbook on marriages of convenience<sup>39</sup>.

The following merely presents detailed guidance in the context of entry visa applications by family members of EU citizens.

#### **5.1 General observations**

People may seek to manipulate the facts or the rules or procedures provided in free movement law in order to obtain an abusive advantage and circumvent limitations under national immigration laws which would be applicable to non-EU nationals wanting to settle in their own capacity.

To tackle this unwanted phenomenon, Article 35 of the Directive authorises Member States to *‘adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Directive in the case of abuse of rights or fraud, such as marriages of convenience.’*

For the purposes of the Directive, the notion of abuse refers to an artificial arrangement entered into solely with the purpose of obtaining the right of free movement and residence

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<sup>39</sup> COM(2014) 604 final and, in particular, Commission Staff Working Document SWD(2014)284 final.

under EU law which, albeit formally observing the conditions laid down by EU rules, does not comply with the purpose of those rules<sup>40</sup>.

Abuse should be distinguished from fraud. Fraudsters seek to break the law by presenting fraudulent documentation alleging that the formal conditions have been duly met or which is issued on the basis of false representation of a material fact concerning the conditions attached to the right of residence. For instance, submitting a forged marriage certificate with a view to obtaining a right of entry and residence under the Directive would be a case of fraud and not of abuse, since no marriage was actually contracted.

In this context, strange or unusual conduct in itself does not represent abuse or fraud.

## 5.2 Forms of abuse of EU free movement law

There are three predominant forms of abuse of EU law on free movement of EU citizens:

### a) *marriages of convenience*

The notion of marriage of convenience for the purposes of the EU free movement rules refers to a marriage contracted for the sole purpose of conferring a right of free movement and residence under EU law on free movement of EU citizens to a spouse who would otherwise not have such a right.

In principle, abuse can also take the form of other relationships of convenience (*such as partnership of convenience*) but all the guidance pertaining to marriages of convenience can be applied *mutatis mutandis*.

### b) *parenthood of convenience*

The notion of parenthood of convenience for the purposes of the EU free movement rules refers to a declaration of parenthood by an EU citizen made for the sole purpose of conferring a nationality (*and the connected statuses, such as EU citizenship, and rights, such as the right of free movement and residence under EU law on free movement of EU citizens*) to a child who is not a biological child of the EU citizen.

### c) *abuse by returning nationals*

Abuse may also occur when EU citizens, unable to be joined by their third-country family members in their Member State of origin because of the application of national immigration rules preventing it, move to another Member State with the sole purpose of evading, upon returning to their home Member State, the national law that frustrated their family reunification efforts, by invoking their rights under EU law.

As confirmed by the Court of Justice<sup>41</sup>, EU citizens benefit from the protection of EU law on free movement of EU citizens upon return from another Member State only if:

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<sup>40</sup> This can be illustrated on marriages of convenience. Every marriage of convenience is, by definition, a valid marriage in that the parties to it have legally become spouses. A marriage of convenience has been entered into at a specific time and place, following the ceremony laid down by the applicable national marriage law and after overcoming any legal impediments to marry (*such as impediments related to capacity, consent, prohibited degrees of consanguinity or the prevention of bigamy*). Consequently, the couple can produce a formally valid marriage certificate.

- a) they have genuinely settled in that Member State pursuant to and in conformity with the conditions set out in Articles 7(1) or 16(1) of the Directive;
- b) created or strengthened family life in that Member State by residing with the family member concerned; and
- c) there was no abuse (*for a conduct to be abusive, there has to be a combination of:*
  - *objective circumstances indicate that the purpose of EU rules were not achieved, despite the fact that the conditions laid down by these rules were formally fulfilled; and*
  - *a subjective element consisting in the intention to obtain an advantage from the EU rules by artificially creating the conditions laid down for obtaining it).*

Abuse by returning nationals can by definition materialise only in the Member State of nationality of the returning EU citizen.

The move to the host Member State (*from which the EU citizen may eventually return home and then seek to bypass domestic immigration rules*) is not abusive – on the contrary, there is no abuse where EU citizens and their family members obtain a right of residence under EU law in a Member State other than that of the EU citizen’s nationality as they are benefiting from an advantage inherent in the exercise of the right of free movement protected by the Treaty, regardless of the purpose of their move to that State (cases C-109/01 *Akrich* and C-1/05 *Jia*).

For further information, see Commission Communication COM(2009) 313 final<sup>42</sup>.

### **5.3 Different types of genuine marriages and marriages of convenience**

On the ground, it may be challenging to distinguish between different types or forms of marriages, in particular between genuine marriages and marriages of convenience.

More detailed guidance to help tackle abusive marriages more effectively by enhancing the understanding of what a marriage of convenience (*including marriages by deception*) is by contrasting it with forms of genuine marriages (*including arranged marriages, proxy or consular marriages*) is available in Section 2.2 of the *Handbook on marriages of convenience*.

#### **5.3.1 Safeguards**

Investigating marriages of convenience and decision-making on the basis of the evidence collected by national authorities may be challenging for all the parties involved.

An incorrect decision restricting free movement rights on the grounds of abuse may have a significant negative impact on the rights and well-being of EU citizens and their families who have genuinely made use of their right to free movement. An incorrect decision may also lead to claims for damages or compensation against national authorities, and incur high costs in legal proceedings both for individuals and for national authorities.

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<sup>41</sup> Case C-456/12 *O and B*.

<sup>42</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0313:FIN:EN:PDF>

Section 3 of the *Handbook on marriages of convenience* helps national authorities to identify all the factors and rules that must be taken into account when wanting to take any measure to prevent or tackle abuse, in particular the EU rules on free movement and fundamental rights.

### 5.3.2 Burden of proof

The burden of proof in relation to the right to enter a Member State and to reside there under EU free movement law is twofold.

Firstly, it is up to the family members to prove that they are beneficiaries of EU free movement law. Under the Directive, when applying for an entry visa or a residence card, they must provide the necessary documents which are required in accordance with the Directive.

Once this burden of proof is *prima facie* discharged (e.g. by presenting a valid marriage certificate), then the burden of proof shifts to the Member States' authorities to prove abuse<sup>43</sup>. This reflects the principle of law that the person who lays charges has to prove the charges. Entry visa applications cannot be refused on the basis of grounds that are isolated from the particulars of the case or that rely on considerations of general prevention.

However, if the Member States' authorities have well-founded suspicions as to the authenticity of a particular marriage, which are supported by evidence (*such as conflicting information provided by the spouses*), they can invite the couple to produce further relevant documents or evidence or interview the couple simultaneously.

Spouses have the obligation to cooperate with the authorities. This obligation should be communicated to the spouses. Should the couple provide additional evidence that dispels the concerns of the national authorities, the case can be closed and the marriage considered genuine. Should the couple fail to provide evidence that would dispel the suspicions which can reasonably be expected to be available to genuine couples or should the couple decide not to provide any evidence at all, this cannot form the sole or decisive reason to conclude that the marriage is a marriage of convenience.

It can, however, be taken into account by the authorities together with all other relevant circumstances in their assessment of whether or not the marriage is genuine.

### 5.4 Operational guidance, particularly for consulates

Section 4 of the *Handbook on marriages of convenience* is designed to serve as a toolbox of solutions enabling Member States to set up tailored operational schemes fitting their specific needs and available resources.

Section 4.1 provides insights into reasons and motivations behind marriages of convenience.

Sections 4.2-4.4 gives details of clues relating to conduct which abusive couples are reasonably expected to exhibit significantly more often than genuine couples that assist national authorities in deciding whether to trigger an investigation into a suspicious marriage.

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<sup>43</sup> Married couples cannot be obliged or required, as a rule, to present evidence that their marriage is not abusive. EU citizens and their family members enjoy the benefit of assumption, meaning that they do not need to provide evidence that their marriage is genuine. To require this would go beyond the requirement to present proof that their marriage is valid.

It focuses particularly on the stage when the couple applies for an entry visa. Tackling marriages of convenience at the entry visa application stage is, by its own nature, more challenging because at that stage the national authorities have not necessarily been able to observe the conduct of the couple for long enough to be able to conclude that their marriage is a marriage of convenience.

When a consulate has suspicions about the nature of a particular marriage but cannot demonstrate the abusive nature of the marriage to the level of the applicable evidential standard, it cannot refuse to issue the entry visa. However, such issuance cannot prevent the consulate from continuing to investigate the couple and finding, when more evidence becomes available in the future, that the marriage is a marriage of convenience and then duly terminate or withdraw any right conferred by the national authorities under the Directive.

Section 4.5 outlines the principal investigation and law enforcement techniques and tools national authorities can deploy to tackle marriages of convenience.

Finally, section 4.6 describes how cross-border cooperation can help Member States in tackling marriages of convenience.

## **6. FAMILY MEMBERS OF EU CITIZENS APPLYING FOR A VISA AT THE EXTERNAL BORDERS**

When a family member of an EU citizen, accompanying or joining the EU citizen in question, and who is a national of a third-country subject to the visa obligation, arrives at the border without holding the necessary visa, the Member State concerned must, before turning him or her back, give the person concerned every reasonable opportunity to obtain the necessary documents or have them brought to him or her within a reasonable period of time to corroborate or prove by other means that he or she is covered by the right of free movement (*Article 5(4) of the Directive*).

If he or she succeeds in doing so and if there is no evidence that he or she poses a risk to public policy, public security or public health requirements, the visa must be issued, without delay, at the border, while taking account of the guidelines above.

## **7. OPERATIONAL INSTRUCTIONS ADDRESSED TO THE CONSULATES OF SWITZERLAND**

### ***Legal basis***

Switzerland does not apply Directive 2004/38/CE but applies the Agreement of 21 June 1999 between the Swiss Confederation and the European Community and its Member States on the free movement of persons (AFMP)<sup>44</sup>.

The Vaduz Agreement of 21 June 2001 amends the Convention of 4 January 1960 establishing the European Free Trade Association and extends the personal scope of the AFMP to cover citizens of EEA Member States.

### **7.1 Definition of ‘family member’ under the AFMP**

Article 3(2) of Annex I to the AFMP provides that the following persons are considered to be family members of an EU citizen<sup>45</sup> and of a Swiss citizen:

- their spouse and their relatives in the descending line who are under the age of 21 or are dependent;
- their relatives in the ascending line and those of the spouse who are dependent on the EU citizen or the Swiss citizen;
- in the case of a student, their spouse and their dependent children.

### **7.2 Differences between Directive 2004/38/EC and the AFMP**

The definition of family members under the AFMP and Swiss national legislation is less restrictive than the one under Article 2(2) (b) of Directive 2004/38/EC. Swiss national legislation also confers the same rights to persons who do not fall within the definitions above (see points 2.1 and 2.2 below). The facilities are granted to family members who travel alone (irrespective of whether the purpose of the trip is to join the EU citizen or not) or accompany the EU citizen.

The AFMP does not provide for the exemption from the visa requirement of family members of EU citizens. They are, however, exempted from the visa requirement if they hold a valid travel document and a residence permit listed in the List of residence permit issued by Member States ([Annex 2](#)).

### **7.3 Specific derogations from the general rules of the Visa Code**

This point provides for operational instructions concerning the specific derogations from the general rules of the Visa Code that are to be applied when it has been ascertained that the visa applicant falls under the AFMP and that there is no exemption from the visa requirement.

#### **7.3.1 Visa fee**

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<sup>44</sup> See footnote 15 regarding the treatment of family members of Swiss citizens by EU Member States.

<sup>45</sup> Where reference is made to EU citizens, it must be understood as also referring to EEA citizens.

Family members of EU citizens as defined by Article 3(2) of Annex to the AFMP (see above) and persons with whom the EU citizen has contracted a registered partnership are exempted from paying the visa fee, according to national Swiss legislation.

### **7.3.2 Granting every facility – processing time**

In accordance with Article 1(1) of Annex I to the AFMP, Switzerland grants all facilities for obtaining a visa to family members of EU citizens as defined by Article 3(2) of the Annex to the AFMP (see above). Based on its national legislation, Switzerland also grants such facilitations to persons with whom the EU citizen has contracted a registered partnership.

The following facilitations are granted:

- visa applications from family members of EU citizens as defined by Article 3(2) of the Annex to the AFMP (see above) and persons with whom the EU citizen has contracted a registered partnership are examined as soon as possible;
- the persons referred to above are not required to present proof of personal means of subsistence (e.g. cash, travellers cheques, credit cards);
- the persons referred to above are not required to present an invitation or proof of sponsorship and/or accommodation.

### **7.3.3 Types of visa issued**

Third-country family members may only be required to have an entry visa in accordance with Regulation (EU) No 2018/1806.

### **7.3.4 Supporting documents**

In order to benefit from the facilitations provided for by the AFMP, the visa applicant must prove that he is a family member of an EU citizen (*e.g. a marriage certificate, birth certificate, proof of dependency, etc.*).

### **7.3.5 Burden of proof**

The burden of proof applicable in the framework of the visa application under the AFMP is twofold:

Firstly, it is up to the visa applicant to prove that he or she is a beneficiary of the AFMP. The applicant must be able to provide the documentary evidence mentioned above as he or she must be able to present evidence to support his claim.

If he fails to provide such evidence, the consulate can conclude that the applicant is not entitled to the specific treatment under the AFMP.

Additional documents may not be required regarding the purpose of travel and means of subsistence (*e.g. proof of accommodation, proof of cost of travelling*), which is in line with

the exemption for family members of EU citizens from filling in certain fields of the visa application form:

Field 19: *'current occupation'*;

Field 20: *'employer and employer's address and telephone number. For students, name and address of educational establishment'*;

Field 31: *'surname and first name of the inviting person(s) in the Member State(s). If not applicable, name of hotel(s) or temporary accommodation(s) in the Member State(s);*

Field 32: *'Name and address of inviting company/organisation'*;

Field 33: *'Cost of travelling and living during the applicant's stay'*.

The consulates may require that the relevant documents be translated, notarised or legalised where the original document is drawn up in a language that is not understood by the authorities of the Member State concerned or if there are doubts as to the authenticity of the document.

### **7.3.6 Notification and grounds for a refusal**

The decision on and the grounds for the refusal of a visa are notified to the visa applicant by means of the standard form. In accordance with national Swiss legislation, family members of EU citizens benefit from the same right of appeal as other visa applicants.

## **PART IV: VISAS APPLIED FOR AT THE EXTERNAL BORDER**

*Legal basis: Visa Code, Articles 35 and 36 and Annex IX, Parts 1 and 2*

### **1. APPLICATION FOR A VISA AT THE EXTERNAL BORDERS**

#### **1.1 Can a visa application be submitted at the border?**

As a general rule, a visa should be applied for prior to the intended journey at the consulate of the competent Member State (see [Part II, chapter 2](#)) in the applicant's country of residence.

However, if the applicant can explain that for unforeseeable and imperative reasons he has not been in a position to apply for a visa in advance, the application can be submitted at the border. The border control authorities may require that the unforeseeable and imperative need for entry be justified by documentation. The applicant's return to his country of origin or residence or transit through States other than the Member States fully implementing the Schengen *acquis* should also be assessed as certain.

*Examples of unforeseeable and imperative reasons for entry justifying that a visa is applied for at the external border:*

- *Sudden serious illness of a close relative;*
- *Death of a close relative;*
- *Entry required so that urgent initial medical and/or psychological care can be provided in the Member State concerned, in particular following an accident such as a shipwreck in waters close to a Member State, or other rescue and disaster situations.*
- *Unexpected rerouting of a flight: A flight between Delhi and London is scheduled to make a stop-over at Frankfurt airport (meaning that the passengers would not leave the aircraft during the stopover), but due to bad weather conditions in Frankfurt the flight is rerouted to Paris Charles de Gaulle airport, and the onward flight will only take place the following day.*
- *Last minute change of members of flight crew: the persons who are no longer part of the airplane crew would need a visa to stay in the territory of the Member States, waiting for another plane to take them back home as ordinary passengers (either from the same airport or from another airport in the territory of the Member States.)*

As regards the specific rules relating to applicants who are family members of EU or Swiss citizens, see [Part III](#).

#### **1.2 Do special rules on the processing of a visa application apply at the border?**

The general rules for examining and taking decisions on a visa application apply when the application is submitted at the border. However, given the circumstances (i.e. the element of urgency), under which visas are applied at the border certain rules become irrelevant as the

various steps of the processing (submission of the application, the examination and final decision on the application) are taken in swift succession.

**Recommended best practice:**

A distinction should be made between:

a) exceptional cases where a third country national who intends to enter into the area of the Member States presents himself at the external border and wishes to apply for the visa there, and

b) emergency cases where a large number of persons who did not intend to enter into the area of the Member States are forced to do so: *e.g. an aircraft with Frankfurt as destination has to land at Luxembourg airport because of weather conditions in Frankfurt; the passengers will be transferred to Frankfurt by bus; several hundreds of the passengers were only to transit through the international part of the airport in Frankfurt before continuing their trip to a destination in a third country; they are compelled to apply for a visa in Luxembourg.*

In the first case (a), in principle all relevant rules in relation to the examination and decision making on visa applications apply, whereas in the second case (b) where the third country nationals concerned had no intention of entering into the territory of the Member States but are compelled to do so for reasons of force majeure, certain provisions may be deviated from, e.g. visa fee waiver.

The following general rules apply when an application is submitted at the border:

**1.2.1 The basic elements of a visa application:**

Presentation of a filled in and signed application form;

- If the relevant authorities of the Member State concerned judge that given the circumstances (e.g. extreme urgency or large number of persons who need to be issued a visa within a short period of time), all the relevant data of the individual applicant may be entered directly into the national visa database, rather than asking the individual persons to fill in the application form;
- Presentation of a valid travel document, see [Part II, point 3.1.1](#);
- As a general rule, the travel document presented must be valid at least three months after the intended date of departure from the Member States, but since a visa is often applied for at the border in cases of urgency, a travel document that has a shorter period of validity may be accepted;
- Presentation of a photograph fulfilling the standards set out in the photographic specifications ([Annex 11](#));
- Collection of biometric data, where applicable, see [Part II, chapter 4](#);

- Collection of the visa fee, see [Part II, point 3.4](#);
- Presentation of supporting documents, including proof of unforeseeable and imperative reasons for entry, see in particular [Part II, point 5.2](#) ;
- Presentation of proof of possession of adequate and valid travel medical insurance, see [Part II, point 5.3](#);

The requirement that the applicant be in possession of travel medical insurance may be waived when such travel medical insurance is not available at that border crossing point or for humanitarian reasons.

**Recommended best practice in relation to the application form:** Basically the general rules in relation to the application form apply, see point 4.2. As to the language versions available (see point 4.2.1) at the border crossing points, the application form should as a minimum be available in the official language(s) of the Member State at whose border the application is submitted and in an official language of the EU institutions, for example English.

### **1.3 What types of visas can be issued at the external border?**

A visa issued at the external border shall be a uniform visa, entitling the holder to stay for a maximum duration of 15 days, depending on the purpose and conditions of the intended stay. In the case of transit, the length of the authorised stay shall correspond to the time necessary for the purpose of the transit.

A third-country national falling within a category of persons for whom prior consultation is required shall, in principle, not be issued a visa at the external border. However, a visa with limited territorial validity for the territory of the issuing Member State may be issued at the external border for such persons in exceptional cases, see [Part II, point 8.5.2](#).

#### **1.3.1 Filling in of the visa sticker**

[See Part II, chapter 10.](#)

#### **1.3.2 Information of central authorities of other Member States on the issuing of a visa**

See [Part II, chapter 9.](#)

#### **1.3.3 Refusal of a visa applied for at the external border**

*Legal basis: Visa Code, Articles 32 (1) and 35(6) and Annex VI*

When an application has been examined and it has been established that the entry conditions for obtaining a uniform visa are fulfilled, a uniform visa may be issued.

In case the entry conditions are not fulfilled, it should be assessed whether the circumstances justify that derogation is exceptionally made from the general rule, and a visa with limited

territorial validity may be issued (see [Part II, point 8.5.2.](#)). If it is not considered justified to derogate from the general rule, the visa shall be refused.

Additionally the visa shall be refused at the border, if the applicant cannot provide proof of unforeseeable and imperative reasons for entry.

A distinction should be made between refusal of entry and refusal of a visa at the border. The rules on refusal of entry are set out in the Schengen Borders Code whereas the rules on refusal of a visa are set out in the Visa Code.

#### **1.3.4 On which grounds should a visa be refused?**

As a general rule, a visa shall be refused when the examination of the application leads to one or more of the following conclusions:

- a) sufficient proof has not been given of unforeseeable and imperative reasons for not having been in a position to apply for a visa in advance;
- b) the applicant has presented a travel document which is false, counterfeit or forged, or that is not valid three months beyond the intended date of departure from the territory of the Member States;
- c) the applicant does not provide justification for the purpose and conditions of the intended stay;
- d) the applicant does not provide proof of sufficient means of subsistence, both for the duration of the intended stay and for the return to his country of origin or residence, or for the transit to a third country into which he is certain to be admitted, or is not in a position to acquire such means lawfully;
- e) the applicant has already stayed for 90 days during the current 180-day period on the territory of the Member States on the basis of a uniform visa or a visa with limited territorial validity;
- f) the applicant is a person for whom an alert has been issued in the SIS for the purpose of refusing entry;
- g) the applicant is considered to be a threat to public policy, internal security or public health or to the international relations of any of the Member States, in particular where an alert has been issued in Member States' national databases for the purpose of refusing entry on the same grounds;
- h) the applicant does not provide proof of holding adequate and valid travel medical insurance, where applicable;
- i) there are reasonable doubts as to the authenticity of the supporting documents submitted by the applicant or the veracity of their contents, the reliability of the statements made by the applicant or his intention to leave the territory of the Member States before the expiry of the visa applied for.

### 1.3.5 Should the refusal be notified to the person concerned and should the grounds for the refusal of a visa be given?

*Legal basis: Visa Code, Articles 32(2) (3)(4) and 35(7) and Annex VI*

When refusing a visa to an applicant the border control authority must fill in the standard form for notifying and motivating refusal of a visa substantiating the reason(s) for refusal, and submit it to the third-country national concerned, [Annex 25](#).

## 2. VISAS ISSUED TO SEAFARERS IN TRANSIT AT THE EXTERNAL BORDER

A seafarer may be issued a visa at the external borders for the purpose of transit, if for unforeseeable and imperative reasons he has not been in a position to apply for a visa in advance, and the reason for crossing the border is to embark on, re-embark on or disembark from a ship on which he will work or has worked as a seaman.

It should be noted that for this particular category of persons, ‘unforeseeable and imperative’ reasons for entry are relatively frequent because of unforeseeable change, due to for instance weather conditions, of schedules of the ship on which the seafarer is to embark, re-embark or disembark from.

**Examples** of unforeseeable and imperative reasons for entry and consequently application for a visa at the border:

- *A seafarer is told by his shipping agent that he has to embark on a ship in the harbour of Rotterdam (Netherlands) on the 4 November. He receives this message on 1 November, while he is still working on another ship. He will disembark from this ship on 2 November and will travel by plane to the Netherlands on 3 November.*
- *A seafarer from the Philippines, living in a small village on an island some hundred kilometres from the embassy, is told by his shipping agent on 1 May that he has to embark on a ship in the harbour of Rotterdam (Netherlands) which is leaving the harbour on 8 May.*
- *A shipping agent requires a seafarer to embark on a ship in the harbour of Rotterdam on the 4 November. He receives this message on 1 November, while he is still working on another ship bound for Piraeus (Greece) on 2 November. He therefore applies for a visa at the external border of Greece where he will enter the territory of the Member States before taking a flight to the Netherlands.*

**Examples** where the seafarer cannot proof unforeseeable and imperative reasons for entry and consequently application for a visa at the border:

- *A seafarer from the Philippines, living in a small village on an island a few hundred kilometres from the embassy, works on a cruise ship with a regular schedule which leaves from the harbour of Rotterdam (Netherlands) every three months on the same day and time.*

- *A seafarer from the Philippines, living in a small village on an island a few hundred kilometres from the embassy, is told by his shipping agent on 1 May that he has to embark on a ship in the harbour of Rotterdam (Netherlands) which is leaving the harbour on 28 May.*
- *An Indian seafarer travels from Brazil to Barcelona (Spain) on board a ship. The seafarer has been working on the ship for 6 months when it arrives in Barcelona. During those 6 months, the ship did not stay in any other port long enough for the seafarer to apply for a Schengen visa and the Spanish consulate in Mumbai would not have been able to handle the seafarer's application before his departure to Brazil as the application would have been submitted earlier than the three-month rule provided by the Visa Code. He therefore has no other option than to apply for a visa at the external border of Spain before disembarking the ship in Spain to fly home or begin a new contract on a different ship.*
- *A seafarer from the Philippines is told on 25 October that he will be joining a ship in the United Kingdom on 1 November. However, due to severe weather conditions, the vessel has diverted to Le Havre (France). In this case the seafarer may apply for a visa at the French border.*

Before issuing a visa at the border to a seafarer, the competent national authorities must exchange information in compliance with the specific operational instructions, see [Annex 26](#) Part 1, by means of the form set out in [Annex 26](#), Part 2.

The general rules in relation to the type of visas to be issued at the external borders apply in the case of seafarers, but the specific nature of the work of seafarers should be taken into consideration by allowing a certain margin in relation to a transit.

**Recommended best practice** in relation to the issue of visas at the external border to seafarers in transit: A seafarer arrives by plane on 1 November at Brussels airport (Belgium) in order to embark on a vessel scheduled to arrive in the port of Antwerp (Belgium) on 3 November. Given that the vessel could be delayed, a few days of margin should be added the period necessary for the transit.

## PART V: MODIFICATION OF ISSUED VISAS

### 1. EXTENSION OF AN ISSUED VISA

#### *Legal basis: Visa Code, Article 33*

In case a visa holder who is already present on the territory of the Member States is unable to leave before the expiry of his visa for reasons of *force majeure*, humanitarian reasons or serious personal reasons, he should address the request for extension of the visa to the competent authorities of the Member State where he is present even if that is not the Member State whose consulate issued the visa.

Under certain circumstances the authorities of the Member State concerned are obliged to extend the visa (point 1.1) and in other cases they may decide to extend the visa (point 1.2).

#### **1.1 Under which circumstances is it mandatory to extend an issued visa?**

The period of validity of an issued visa and/or the duration of stay allowed for shall be extended where the competent authority of a Member State considers that the visa holder has provided proof of *force majeure* or humanitarian reasons preventing him from leaving the territory of the Member States before the expiry of the period of validity of the visa or the duration of stay authorised by the visa.

#### *Example of reason of force majeure:*

- last minute change of flight schedule by airline (e.g. due to weather conditions, strike)

#### *Example of humanitarian reasons:*

- sudden serious illness of the person concerned (meaning that the person is unable to travel) or sudden serious illness or death of a close relative living in a Member State

According to the VFAs it is mandatory to extend only for reasons of *force majeure* and not for 'humanitarian reasons'. Nevertheless, third country nationals covered by these VFAs also benefit from the more generous provisions of the Visa Code.

#### **1.2 Can a fee be charged for the extension of a visa for reasons of force majeure or for humanitarian reasons?**

In case of an extension of a visa for reasons of *force majeure* or for humanitarian reasons, no fee can be charged.

#### **1.3 Under which circumstances is it not mandatory to extend an issued visa?**

The period of validity and/or the duration of stay of an issued visa may be extended if the visa holder provides proof of serious personal reasons justifying the extension of the period.

***Examples of serious personal reasons justifying an extension of a visa***

- a Namibian national has travelled to Cologne (Germany) to collect a family member who has undergone an operation. The day before the scheduled departure, the patient has a relapse and is only allowed to leave the hospital two weeks later.

- an Angolan businessperson has travelled to Italy to negotiate a contract with an Italian company and to visit several production sites in Italy. Negotiations take longer than expected and the Angolan national has to stay one week longer than intended.

***Examples of personal reasons not justifying the extension of a visa:***

- a Bolivian national has travelled to Sweden to participate in a family event. At this event he meets an old friend and would like to prolong his stay for another two weeks.

**1.3.1 Can a fee be charged for the extension of a visa for serious personal reasons?**

In the case of extension of a visa for serious personal reasons, a fee of 30 EUR should be charged.

**1.4 Should prior consultation be carried out before taking a decision on extending a visa?**

If the visa holder applying for an extension of his visa has the nationality of a third country or belongs to a category of such nationals for whom a Member State requires "prior consultation", such consultation should not be carried out again. Since such consultation has been carried out before the issuance of the original visa, it can be assumed that the result of this consultation remains valid.

**1.5 What should be the territorial validity of an extended visa?**

Generally, the extension should allow the holder to travel to the same territory as the one covered by the initial visa. However, the authorities of the Member State responsible for the extension may limit the territorial validity of the extended visa. The contrary can never be the case, i.e. a visa that originally had a limited territorial validity cannot be extended to allow a stay in the entire territory of the Member States.

**1.6 What should be the period of stay allowed for by an extended visa?**

Generally, the extension of a visa should not result in a total stay going beyond 90 days in any 180-day period.

**1.7 What form should the extension take?**

***Legal basis: Visa Code, Articles 27 and 33 (6) and Annex X***

Extension of visas shall take the form of a visa sticker in the uniform format ([Annex 19](#)) and the sticker should be filled in accordance with [chapter 10](#) and [Annex 20](#).

### 1.8 What should be verified when assessing a request for extension of a visa?

If the competent authority considers that the reasons provided for requesting an extension of a visa are sufficient, the following should be verified:

- is the applicant's travel document still valid 3 months beyond the intended date of departure?
- does the applicant possess sufficient means of subsistence for the additional period of stay?
- has the applicant presented proof of travel medical insurance for the additional period of stay?

All relevant conditions for obtaining the original visa should still be met.

Should data on an extended visa be entered into the VIS?

When a visa has been extended, the relevant data shall be entered into the VIS.

## 2. ANNULMENT OF AN ISSUED VISA

### *Legal basis: Visa Code, Article 34 and Annex VI*

A visa shall be annulled where it becomes evident that the conditions for issuing it were not met at the time when it was issued, in particular if there are serious grounds for believing that the visa was fraudulently obtained.

A visa shall in principle be annulled by the competent authorities of the Member State which issued it. A visa may be annulled by the competent authorities of another Member State, in which case the authorities of the Member State that issued the visa shall be informed of such annulment.

**Example:** *A Russian national holding a single entry visa issued by the Italian consulate in Moscow arrives at Brussels airport (Belgium) and has no proof of a connecting flight from Brussels to an Italian airport or a solid explanation justifying his being there.*

It may be assumed that this visa was fraudulently obtained and the Belgian authorities should annul the visa and inform the Italian authorities of this.

**Example:** *An Indian national holding a multiple entry visa for 90 days issued by the Italian consulate in Delhi for the purpose of attending a summer course at an Italian university is working illegally in Germany at a restaurant. The financial control authority on illegal*

*employment conducts an investigation and reveals his activity.*

In this case the German authorities shall annul his visa.

## **2.1 Grounds for annulment**

Failure of the visa holder to produce one or more of the supporting documents referred to in point 5.2.1 or failure to prove, when presenting himself at the border, the possession of sufficient means of subsistence shall not automatically lead to a decision to annul the visa, especially if the visa has been issued by another Member State, but entry should be refused.

**Example:** *A Belarusian national holding a multiple entry visa issued (for business purposes) by the Polish consulate in Minsk (Belarus) flies from Minsk to Rome (Italy) with the purpose of tourism and he cannot prove the possession of sufficient means of subsistence for staying in Italy. It is obvious that he has already used his visa for business purposes in Poland and the visa is still valid.*

In this case the visa should not be annulled but entry should be refused.

If the visa holder cannot prove the purpose of his journey when checked at the border, a further enquiry must be made in order to assess whether the person obtained the visa in a fraudulent way and represents a risk in terms of illegal immigration. If necessary, contacts with the competent authorities of the Member State having issued the visa will be taken. Only if it is ascertained that the visa was obtained in a fraudulent way, such visa must be annulled.

## **2.2 How should the annulment be marked?**

If a visa is annulled, a stamp stating "ANNULLED" shall be affixed to it and the optical variable feature of the visa sticker, the security feature "latent image effect" as well as the term "visa" shall be rendered unusable by using a sharp instrument. The aim is to prevent the optical variable feature from being removed from the visa sticker and from being misused.

**Recommended best practice** in relation to the language(s) used for the stamp and information of annulment of a visa:

In order for the relevant authorities of all Member States to understand the meaning of the stamp, the word "annulled" could be indicated in the national language(s) of the Member State carrying out the annulment and for instance in English. See also point 4.

## **2.3 Should annulled visa be entered into the VIS?**

When a visa has been annulled, the relevant data shall be entered into the VIS.

Regarding the actions to be carried out in VIS, see [Annex 32](#).

## **2.4 Should the annulment be notified to the person concerned and should the grounds for the annulment be given?**

When a visa has been annulled, the competent authorities must fill in the standard form for notifying and motivating annulment of a visa substantiating the reason(s) for the annulment, and submit it to the third-country national concerned, see [Annex 25](#).

**Recommended best practice:** When a Member State has annulled a visa issued by another Member State, it is recommended to forward the information by means of the form set out in [Annex 30](#).

## **2.5 Does the person concerned have the right to appeal a decision on annulment?**

Persons whose visa has been annulled shall have the right to appeal. Appeals shall be conducted against the Member State that has taken the decision on annulment. When notifying the annulment to the person concerned, information regarding the procedure to be followed in the event of an appeal should be given.

## **3. REVOCATION OF AN ISSUED VISA**

*Legal basis: Visa Code, Article 34 and Annex VI*

A visa shall be revoked where it becomes evident that the conditions for issuing it are no longer met. A visa shall in principle be revoked by the competent authorities of the Member State which issued it. A visa may be revoked by the competent authorities of another Member State, in which case the authorities of the Member State that issued the visa shall be informed of such revocation.

*Example: A visa must be revoked at the border if the holder of the visa has become the subject of an alert in the Schengen Information System (SIS), since the visa was issued.*

A visa may be revoked at the request of the visa holder. Such a request should be made in writing. The competent authorities of the Member States that issued the visa shall be informed of such revocation.

### **3.1 Grounds for revocation**

Failure of the visa holder to produce, one or more of the supporting documents referred to in [Part II, point 5.2](#), or failure to prove, the possession of sufficient means of subsistence shall not automatically lead to a decision to revoke the visa, especially if the visa has been issued by another Member State.

### **3.2 How should revocation be marked?**

If a visa is revoked, a stamp stating "REVOKED" shall be affixed to it and the optical variable feature of the visa sticker, the security feature "latent image effect" as well as the term "visa" shall be rendered unusable by using a sharp instrument. The aim is to prevent the optical variable feature from being removed from the visa sticker and from being misused.

**Recommended best practice** in relation to the language(s) used for the stamp and information of revocation of a visa:

In order for the relevant authorities of all Member States to understand the meaning of the stamp, the word "revoked" could be indicated in the national language(s) of the Member State carrying out the revocation and for instance in English. See also point 4.

### **3.3 Should data on a revoked visa be entered into the VIS?**

When a visa has been revoked, the relevant data shall be entered into the VIS.

Regarding the actions to be carried out in VIS, see [Annex 32](#).

### **3.4 Should the revocation be notified to the person concerned and should the grounds for the revocation be given?**

When a visa has been revoked, the competent authorities must fill in the standard form for notifying and motivating the revocation of the visa substantiating the reason(s) for the revocation, and submit it to the third-country national concerned, see [Annex 25](#).

**Recommended best practice:** When a Member State has revoked a visa issued by another Member State it is recommended to forward the information by means of the form set out in [Annex 31](#).

### **3.5 Does the person concerned have the right to appeal a revocation?**

Persons whose visa has been revoked shall have the right to appeal, unless the revocation was carried out at the request of the visa holder. An appeal shall be conducted against the Member State that has revoked the visa. When notifying the revocation to the person concerned, information regarding the procedure to be followed in the event of an appeal should be given.

#### 4. TRANSLATIONS OF "ANNULLED" AND "REVOKED"

EN	ANNULLED	REVOKED
BG	АНУЛИРАНА	ОТМЕХЕНА
ES	ANULADO	RETIRADO
CS	NEPLATNĚ	ZRUŠENO
DA	ANNULLERET	INDDRAGET
DE	ANNULLIERT	AUFGEHOBEN
ET	TÜHISTATUD	KEHTETUKS TUNNISTATUD
EL	ΚΑΤΑΡΓΕΙΤΑΙ	ΑΝΑΚΑΛΕΙΤΑΙ
FR	ANNULÉ	ABROGÉ
HR	PONIŠTENO	UKINUTO
IT	ANNULLATO	REVOCATO
LV	ANULĒTA	ATCELTA
LT	PANAİKINTA	ATŠAUKTA
HU	MEGSEMMISÍTVE	VISSZAVONVA
MT	ANNULLATA	REVOKATA
NL	NIETIG VERKLAARD	INGETROKKEN
PL	UNIEWAŻNIONO	COFNIĘTO
PT	ANULADO	REVOGADO
RO	ANULAT	REVOCAT
SK	ZRUŠENÉ	ODVOLANÉ
SL	RAZVELJAVLJENO	PREKLICANO
FI	MITÄTÖN	KUMOTTU

SV	UPPHÄVD	ÅTERKALLAD
NO	ANNULLERT	INNDRATT

## PART VI: LIST OF RELEVANT LEGISLATION

### UNION LAW

- Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen on 19 June 1990 (OJ L 239, 22.9.2000, p. 19);
- 94/795/JHA: Council Decision of 30 November 1994 on a joint action adopted by the Council on the basis of Article K.3.2.b of the Treaty on European Union concerning travel facilities for school pupils from third countries resident in a Member State (OJ L 327, 19.12.1994, p. 1);
- Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 164, 14.7.1995, p. 1) as amended by Council Regulation (EC) No 334/2002 of 18 February 2002 amending Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 53, 23.2.2002, p. 7);
- Decision 2119/98/EC of the European Parliament and of the Council of 24 September 1998 setting up a network for the epidemiological surveillance and control of communicable diseases in the Community (OJ L268, 3.10.1998, p. 1);
- Charter of Fundamental Rights of the European Union (OJ C 364, 18.12.2000, p. 1);
- Regulation (EU) No 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (codification) OJ L 303 of 28.11.2018, p. 39);
- Council Regulation No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1);
- Council Regulation (EC) No 693/2003 of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual (OJ L 099, 17.4.2003, p. 8);
- Council Regulation (EC) No 694/2003 of 14 April 2003 on uniform formats for Facilitated Transit Documents (FTD) and Facilitated Rail Transit Documents (FRTD) provided for in Regulation (EC) No 693/2003 (OJ L 99, 17.4.2003, p. 15);
- Council Decision of 8 March 2004 concerning the conclusion of the Memorandum of Understanding between the European Community and the National Tourism Administration of the People's Republic of China on visa and

- related issues concerning tourist groups from the People's Republic of China (ADS) (OJ L 83, 20.3.2004, p. 12);
- Council Directive 2004/38/EC of the European Parliament and the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (corrigendum OJ L 229, 29.6.2004, p. 35);
  - Regulation No 399/2016 of 9 March 2016 of the European Parliament and of the Council establishing a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1);
  - Decision No 896/2006 of the European Parliament and of the Council of 14 June 2006 establishing a simplified regime for the control of persons at the external borders based on the unilateral recognition by the Member States of certain residence permits issued by Switzerland and Liechtenstein for the purpose of transit through their territory (OJ L 167, 20.6.2006, p. 8);
  - Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention (OJ L 405, 30.12.2006, p. 1; corrigendum OJ L 29, 3.2.2007, p. 3);
  - Decision No 582/2008/EC of the European Parliament and of the Council of 17 June 2008 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Cyprus and Romania of certain documents as equivalent to their national visas for the purposes of transit through their territories (OJ L 161, 20.6.2008, p. 30);
  - 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) (OJ L 243, 15.9.2009, p. 1);
  - Regulation 265 (EU) 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa (OJ L 85, 31.3.2010, p. 1);

#### **INTERNATIONAL LAW**

- Convention of 7 December 1944 on International Civil Aviation (ICAO Convention, Annex 2, 9);
- European Convention for the protection of Human Rights of 4 November 1950 and its Protocols;
- ILO Convention on Seafarers' Identity Documents (No 185) of 19 June 2003;
- Agreement between the European Community and its Member States, of one part, and the Swiss Confederation, of the other, on the free movement of persons (OJ L 114, 30.4.2002, p. 6);
- Council Decision 2007/840/EC of 29 November 2007 on the conclusion of the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas (OJ L 332, 18.12.2007, p. 68);

- Council Decision 2007/340/EC of 19 April 2007 on the conclusion of the Agreement between the European Community and the Russian Federation on the facilitation of issuance of short-stay visas (OJ L 129, 17.5.2007, p. 27);
- Council Decision 2007/821/EC of 8 November 2007 on the conclusion of the Agreement between the European Community and the Republic of Albania on the facilitation of the issuance of visas (OJ L 334, 19.12.2007, p. 85);
- Council Decision 2007/822/EC of 8 November 2007 on the conclusion of the Agreement between the European Community and Bosnia and Herzegovina on the facilitation of the issuance of visas (OJ L 334, 19.12.2007, p. 97);
- Council Decision 2007/823/EC of 8 November 2007 on the conclusion of the Agreement between the European Community and the Republic of Montenegro on the facilitation of the issuance of visas (OJ L 334, 19.12.2007, p. 109);
- Council Decision 2007/824/EC of 8 November 2007 on the conclusion of the Agreement between the European Community and the former Yugoslav Republic of Macedonia on the facilitation of the issuance of visas (OJ L 334, 19.12.2007, p. 125);
- Council Decision 2007/825/EC of 8 November 2007 on the conclusion of the Agreement between the European Community and the Republic of Serbia on the facilitation of the issuance of visas (OJ L 334, 19.12.2007, p. 137)
- Council Decision 2007/827/EC of 22 November 2007 on the conclusion of the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas (OJ L 334, 19.12.2007, p. 169)
- Council Decision 2011/117/EU of 18 January 2011 on the conclusion of the Agreement between the European Union and Georgia on the facilitation of the issuance of visas (OJ L 52 25.2.2011, p 34).
- Council Decision No 2013/296/EU of 13 May 2013 on the conclusion of the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas (OJ L 168, 20.6.2013, p. 3);
- Council Decision No 2013/297/EU of 13 May 2013 on the conclusion of the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas (OJ L 168, 20.6.2013, p. 11);
- Council Decision No 2013/521/EU of 7 October 2013 on the conclusion of the Agreement between the European Union and the Republic of Cape Verde on facilitating the issue of short-stay visas to citizens of the Republic of Cape Verde and of the European Union (OJ L 282, 24.10.2013, p. 3);
- Council Decision No 2013/628/EU of 22 October 2013 on the conclusion of the Agreement between the European Union and the Republic of Armenia on the facilitation of the issuance of visas (OJ L 289, 30.10.2013, p. 2).
- Council Decision No 2014/242/EU of 14 April 2014 on the conclusion of the Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas (OJ L 128, 30.4.2014, page 49).