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Access to Europe in a Globalised World: Assessing the EU's Common Visa Policy in the Light of the Stockholm Guidelines

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Abstract

This paper is written against the background of the on-going evaluation of the EU Visa Code and an emerging paradigm shift in EU visa policy with visas becoming a tool for economic growth and job creation. The paper analyses, more particularly, current challenges for the proper functioning of the EU's common visa policy by focusing on the three pillars on which this policy is based: its cornerstone, the Visa Code; consular cooperation on the ground, as an indispensable supplement of the latter; and, finally, the Visa Facilitation Agreements, a potential tool for its smooth operation in certain countries. Due to the limited mid-term review of the Stockholm Programme, initially foreseen for 2012, the Stockholm guidelines for visa policy are integrated in the relevant analysis.

Keywords

EU's common visa policy; Visa Code; Visa Facilitation Agreements; Common Visa Application Centres; Local Schengen Cooperation; Stockholm Programme

1. Introduction[*]

Initially developed as a flanking measure to external border controls, necessary for an area without internal borders, the EU's common visa policy[1] has been gradually gaining new dimensions. It is no longer considered a mere instrument of "policing at a distance",[2] contributing to the prevention of irregular immigration. The European Union has been becoming more and more perceptive to the common visa policy's additional function as a tool of external policy, and facilitating legitimate travel through flexible visa procedures is increasingly put into the context of the EU's external relations. This is because of its influence on third countries which consider mobility a top priority of their foreign policy. But it is also because the openness of the EU to cultural, economic, scientific and trade exchanges is now regarded as one of the preconditions for enhancing the Union's role as a global player; not only in the interests of the business community, the university sector and cultural stakeholders.[3] This vision was reaffirmed in the Stockholm Programme adopted by the European Council and defining strategic guidelines for legislative and operational planning within the area of freedom, security and justice for the period 2010-14. Indeed, the European Council declared, *inter alia*, that "the [EU common visa] policy must (…) be part of a broader vision that takes account of relevant internal and external policy concerns."[4]

Additionally, against the background of the current economic crisis in the European Union and inspired by the relevant approach adopted by the US government, another dimension of an effective visa policy has been accentuated most recently, namely its capability to spur economic growth and job creation, especially in the tourism sector.[5] With foreign visitors having spent, in 2011, USD 423 billion and with 18.8 million jobs occupied as a result of tourism and travel in 2011, the tourism sector is among the biggest generators of employment and revenues in the European Union, representing a key driver for economic growth and development.[6] In this regard, reference has been made to the estimates of Tourism Economics according to which, under flexible visa rules, the Schengen area can attract between 8 and 46 million more tourists by 2015. This would generate by the same year, an additional income of between EUR 11-60 billion in international tourism receipts. It would also create 100,000 to 500,000 extra jobs in the tourism sector and between 200,000 and 1.1 million new jobs in general.[7]

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1 The legal basis for the common visa policy of the Union is provided in Art. 77(2) TFEU. As this paper focuses mainly on major challenges of the existing EU visa policy, the analysis does not include Airport Transit Visas (A-type Schengen visas). Instead, the terms "visas", "C(-type) visas", "Schengen visas", etc. are used in this paper in the sense of Art. 2(2)(a) of the Visa Code (Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas, OJ 2009, L 243, p. 4-5), according to which a visa means "an authorisation issued by a Member State with a view to: (a) … an intended stay in the territory of the Member States of a duration of no more than three months in any six-month period from the date of first entry in the territory of the Member States."

2 See Bigo, D. and Guild, E. (2005). Policing at a Distance: Schengen Visa Policies, in: *Controlling Frontiers: Free Movement Into and Within Europe*, Bigo, D. and Guild, E. (eds.), p. 233 et seq. Ashgate, Aldershot, United Kingdom.

3 Communication on Migration of 4.5.2011, COM(2011) 248 final, pp. 10-11.

4 The Stockholm Programme — An open and secure Europe serving and protecting citizens, OJ C 115, 4.5.2010, p. 27.

5 Communication on Implementation and development of the common visa policy to spur growth in the EU, COM(2012) 649 final of 7.11.2012. See reference to the Executive Order of President Obama of 19 January 2012, and the "Visa Improvements to Stimulate International tourism to the United States of America Act" on p. 2.

6 Ibid., p. 2.

7 Ibid., p. 3.

With the mentioned setting in mind, analysing deficiencies of the current Schengen visa system and looking into the ways to its improvement become particularly relevant. It is, meanwhile, only natural, given this, to search out an evidence-based visa policy, which would strike the right balance between the concerns of stakeholders and major interests. The main challenge for any such research is, however, the lack of comprehensive data. Therefore, research into the challenges can only be based on the comprehensive reports from a few relatively representative countries,[8] the relevant information given by the European Commission,[9] as well as by the analysis of the pertinent provisions of the Visa Code.

To analyse the current challenges for the proper functioning of the EU (Schengen) common visa policy it is necessary to examine its three pillars: its cornerstone the Visa Code; consular cooperation on the ground, an indispensable supplement of the latter; and, finally, the Visa Facilitation Agreements, a potential tool for its smooth operation in certain countries. Against the background of the limited mid-term review of the Stockholm Programme,[10] the Stockholm guidelines concerning the visa policy will be integrated in the relevant analysis.

2. Current challenges of the Schengen visa policy and the role of the Visa Code

All the available information[11] suggests that apart from the lack of proper implementation of the Visa Code (VC)[12], which due to the limited human resources understandably cannot be fully monitored by the European Commission, at least three key issues have to be addressed in order to ensure the efficient functioning of the system: (i) the lack of the consular coverage and the accessibility of visa procedures; (ii) lengthy and intricate procedures; and (iii) the stringent conditions for the mobility of frequent and *bona-fide* travellers, especially where multiple-entry visas are concerned.

2.1. The problem of consular coverage

The issue of consular coverage is not only important in the context of access to visa procedures. It also matters in terms of additional travel and accommodation costs as well as the time spent on a Schengen visa application. All these might easily deter potential travellers from applying for this kind of a visa. It can be argued that in the light of the requirement of personal appearance of applicants at consulates to lodge their applications,[13] one of the main causes for problems relating to the access to visa procedures can be found in the distribution of Member States' competence for examining and deciding

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8 Among others: Sushko, I. Suprunenko, O. Sushko, O. Kuzio, M. The EU Visa Policy in Ukraine, Independent Monitoring Findings 2012, Kiev, Ukraine; European Initiative – Liberal Academy (EI-LAT) Tbilisi, Visa Facilitation and Readmission: Georgia's Visa Liberalizations Prospects with the EU (original title: ვიზის ფასილიტაცია და რეადმისია: უვიზო მიმოსვლის პერსპექტივები), Final Report, 2012, Tbilisi, Georgia; Roads to Visa-free Travel, Position Paper Committee on Eastern European Economic Relations, 2011, Berlin, Germany; Weinar, A. Korneev, O. Makaryan, S. and Mananashvili, S., Consequences of Schengen Visa Liberalisation for the Citizens of Ukraine and the Republic of Moldova, MPC Research Report 2012/01, Florence, Italy.

9 Especially annual visa statistics, as well as the list of consular presence both available on the website of DG HOME.

10 The European Council foresaw a mid-term review of the Stockholm Programme, to be conducted by the European Commission, for 2012. The only available documents, especially in the area of home affairs, which have been produced in this regard, is a table entitled "Implementation of the Stockholm Programme in the Home Affairs Area", which consists of a list of the measures adopted in the mentioned area after the adoption of the Programme (Ref. Ares(2012)1110655 - 25/09/2012), as well the contribution of a Cyprus Presidency (Council of the European Union, 15921/12, ADD 1, 15.11.2012), assessing the Stockholm implementation progress by means of general description of measures adopted in relevant areas.

11 See *supra* note 8.

12 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, pp. 1-58.

13 Art. 10(1) VC.

on a visa application. According to Art. 5(1) VC, only the Member State whose territory constitutes the sole destination of the visit or the main destination of the visit(s) in terms of the length or purpose of stay can receive and decide on visa applications. The only exception to this rule is made when no main destination can be determined. In this situation, the competent Member State is the one whose external border the applicant intends to cross when entering the Schengen area.[14] The transfer of the competence to another Member State is only possible through full or limited representation arrangements.[15] It is thus not surprising that given the form of competence distribution, not all 26 Schengen Member States have their consular posts or are represented not only in all the third countries whose nationals require the Schengen visa but also in all the distant areas of these countries.

In fact, according to the Commission's List of Member States' consular presence,[16] in 2012 there were numerous cases where a Schengen Member State was neither present nor represented in a third country. For instance, it is impossible to apply for Schengen visas for the Czech Republic, Lichtenstein, Malta and Switzerland in Armenia, while in Kyrgyzstan, there is only the German consular post, which represents 12 other Schengen States, whereas the remaining 13 Schengen states are neither present nor represented in Bishkek. Similarly, because of the absence of relevant consular posts, residents in Iraq are denied the possibility to apply for Schengen visas for 12 out of 26 Schengen States. All this happens in spite of the Art. 5(4) VC obligation of the Member States to cooperate with a view to preventing a situation in which an application cannot be examined and decided on because of the absence of consular posts or representation arrangements in third countries.

In the same vein, the available data[17] show that, difficulties arise in geographically large countries, including those where all Member States' consular posts are present or represented. The problem is that access to Schengen visas for certain Member States on the part of inhabitants of certain regions and megacities is particularly hampered owing to the lack (and even the impossibility) of extensive consular coverage. Take Russia, China and India that are constantly among top 10 Schengen visa application countries and where the potential of the short-term tourism to the EU is widening due to economic growth and the rise of a middle class. So, let's say that a Russian citizen living in Novosibirsk, a megacity with almost 1.5 million inhabitants, wants to obtain a Schengen visa for Belgium. Belgium has consular posts only in Moscow and St. Petersburg, cooperating in those two cities with external service providers (ESP), and is represented in Kaliningrad by Lithuania. The resident of Novosibirsk must, then, cross 3,400 kilometres just to lodge a visa application. It does, therefore, not astonish that in 2012 out of more than 6.2 million Schengen visa applications lodged in the Russian Federation, Belgium received only 22,767 applications. Another example: a resident of the Indian city of Kolkata with a population of 4.5 million wants to apply for a Schengen visa for Spain. That resident will have to travel 1,500 km to get to the Spanish consulate in New Delhi. A similar situation is found in China where the majority of Schengen Member States have their consular presence or work with external service providers in Beijing, Shanghai and Hong Kong. All this means that there is a great deal of untapped potential for tourism to Europe.[18]

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14 Art. 5(1)(c) VC.

15 While in the case of full representation, the representing Member State can not only receive but also decide on visa applications, limited representing Member State can only collect applications and enrol biometric identifiers for their further transfer to the competent Member State without the right to decide on applications (art. 8(1) VC).

16 List of Member States consular presence, representation arrangements and forms of cooperation for the collection of visa applications, collection by Honorary Consuls or outsourcing of the collection of visa applications. Available on: http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/borders-and-visas/visa-policy/docs/en_annex_28_ms_consular_representation_20.pdf

17 Ibid.

18 Ibid. p. 5.

2.2. Lengthy and intricate procedures

Lengthy and intricate procedures represent an additional challenge for the proper functioning of the EU's common visa policy. There is simultaneously insufficient funding of consulates in the context of the current economic crisis and steadily rising applications on the ground. This means understaffed consulates facing thousands of visa applications. The problem of lengthy and intricate procedures can be considered as rooted, to a certain extent, in the relevant provisions of the Visa Code. First and foremost, any applicant must provide a wide range of supporting documents[19] - in addition to the mandatory travel medical insurance - to justify the purpose of the journey; proof of accommodation; proof of sufficient means of subsistence for the entire journey; as well as proof of the intention to leave the Member States' territory before the expiry of the Schengen visa, which is the cause for extensive paperwork, while applying for a Schengen visa.[20] The situation is further aggravated by the fact that the Visa Code only provides a non-exhaustive, optional list of supporting documents in Annex II. This means that Member States' consulates can add extra documents to that list which is already extensive. The optional nature of the list gives rise to the divergent practices among Member States' consulates, leading to the problem of visa shopping, which will be elaborated on below.

Therefore, the procurement (and often subsequent translation) of required supporting documents itself needs considerable effort on the side of visa applicants, not only affecting the real time and money expenditure for obtaining a Schengen visa but also having other negative consequences such as abandoning the plans to visit a given Schengen state;[21] employing commercial intermediaries and paying more to obtain the visa; lying about the purpose of the journey to provide fewer documents[22] or finally, lodging an application at another consulate known for its liberal visa policy. Moreover, in accordance with Art. 23(3) VC, the provision of particular documentary evidence required by a consulate at its discretion can be used by the latter to extend the time-frame for visa processing up to 60 days after an application has been lodged.

Another provision of the Visa Code, which has a slowdown effect on the visa procedures, is embodied in Art. 22 VC. According to this article a Schengen State may require the central authorities of other Member States to consult the central authorities of the former during the examination of visa applications lodged by nationals of specific third countries or specific categories of such nationals.[23] As the Member State can reply within seven calendar days,[24] it means that visa processing is delayed by one more week. So, according to the Danish government, while normal visa applications are processed and decided upon within a few days, visa processing time for citizens of those countries subject to prior consultation, usually takes 10-12 days as a minimum.[25] Annex 16 to the Visa Code includes the list of citizens of 30 countries, mainly from the Middle East, Maghreb and Sub-Saharan Africa, as well as three additional categories (Palestinians, refugees and stateless persons), where at least one Schengen State requires a prior consultation.[26]

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19 In accordance with Art. 14 VC.

20 See among others: Weinar, A. et al., *op cit.*

21 In fact, according to COM(2012) 649 final, p. 3 (with reference to ETOA Origin Market Report 2010 "Europe: Open for Business?"), 21% of potential tourists from emerging markets give up their travel plans to Europe due to visa requirements.

22 For instance, instead of saying that they are going to visit family members, they declare tourism as the reason for their journey.

23 Art. 22(1) VC.

24 Art. 22(2) VC.

25 http://www.nyidanmark.dk/en-us/coming_to_dk/visa/processing_time.htm

26 See its version of 4.2.2013 on: http://www.bfm.admin.ch/content/dam/data/bfm/rechtsgrundlagen/weisungen/visa/vhb/vhb1-anh16-d.pdf

Finally, even though the processing of a visa application does not have to take, in principle, more than 15 days,[27] if considering an additional 2-week period necessary for a possible appointment to lodge in person a visa application[28] as well as the possibility to easily extend the mentioned 15 days up to 30 and in exceptional cases, up to 60 days,[29] it can be argued that under certain circumstances the existing rules from the Visa Code can hinder the time-effective issuance of Schengen visas.

2.3. Mobility of bona-fide and frequent travellers

The facilitation of legitimate travel is one of the main purposes of the EU's common visa policy and, particularly, of the Visa Code. According to Recital 8 of the Code, this means a simple procedure for those applicants whom the consulate knows for their integrity and reliability (i.e. *bona-fide* travellers) and multiple-entry visas (MEVs) for frequent or regular travellers. The same provision suggests that apart from facilitating smooth travel, the issuance of MEVs is also supposed to lessen the administrative burden of Member States' consulates.

Even though there is no official definition of a *bona-fide* traveller in the Visa Code, the following criteria embodied in Arts. 24(2)(b) and 26(4)(b) VC can help to determine just who they are:

(i) the proof of integrity and reliability by the lawful use of previous Schengen visas (i.e. the use of more than one visa);

(ii) the potential traveller's economic situation in his or her country of origin, and

(iii) the proof of genuine intention to leave the Schengen area before the expiry of the visa being applied for.

The Visa Code provides only three options for such travellers in facilitating their travel. First, according to Art. 10(2) VC, consulates "may waive" for them the requirement of personal appearance when lodging an application. Second, based on Art. 14(6) VC, consulates "may waive" for them one or more supporting documents. Finally, they have to be issued multiple-entry visas with a period of validity "between six months and five years" provided that they can prove the need and intention to travel frequently and/or regularly due to occupational and family status.

The problem with the first two options is that they are merely "may-clauses" whose application falls entirely under the discretion of the consulates, and it is well-known that these "may-clauses" are rarely applied by Member States. The same is true for the Member States' discretion with regard to the validity period of MEVs. This means that unless otherwise proved by the comprehensive data on the validity period of the issued MEVs, data which are not available at this moment, it can be assumed (as illustrated below on the example of Ukraine) that such discretion is used restrictively towards genuine *bona-fide* and frequent travellers.

With regard to the relevant provisions concerning the issuance of MEVs, apart from the aforementioned discretion enjoyed by consulates, there are two additional problems. First, Art. 24(2)(a) provides as examples of the categories of applicants who need to travel frequently: business persons, civil servants, NGO representatives, seafarers, family members of EU citizens and family members of third-country nationals legally residing in Member States. Although they are meant to be examples, the restrictive interpretation of that provision by the consulates can lead to the exclusion of other categories such as researchers, students, artists, sports persons, journalist, etc. from obtaining MEVs. Second, the requirement for proving the economic situation in the country of origin might also have an excluding effect for many categories of travellers mentioned above. Finally, the previous use

[27] Art. 23(1) VC.

[28] Art. 9(2) VC.

[29] Art. 23(2) and (3) VC.

of more than one Schengen visas can often be an unreasonable barrier for many *bona-fide* travellers to obtain directly a MEV.

Three major problems illustrated above show clearly that beyond "important new opportunities" created by the Visa Code "for further developing the common visa policy" (citation from the Stockholm Programme), there is also much space for legislative improvements with a view to making Schengen visa procedures more accessible, more flexible and better able to respond to the real needs of *bona-fide* and frequent travellers.

3. Institutional *status quo* in the light of Stockholm guidelines

As the text of the Stockholm Programme rightly suggests, apart from legislative harmonisation of the Union's visa policy, an important step towards implementing the common policy in this area is institutional cooperation on the ground.[30] The legal basis for this is embodied in different provisions of the Visa Code. This so-called Regional Consular Cooperation might be even considered as a pre-stage for a future Common European Issuing Mechanism for short-term visas. The latter is seen by the European Council as a potential element of a new stage in the development of the common visa policy.[31]

Concerning the options provided for in the Visa Code in respect to such cooperation, Arts. 40(2)(b), 8(1), 41 and 48 of the Code are of particular relevance. Art. 40(2)(b) obliges Member States to cooperate with one or more Member States, within the framework of Local Schengen Cooperation (LSC) or through other appropriate contacts, in the form of limited representation, co-location, or a Common Application Centre. In accordance with Art. 40(3) VC, the purpose of this cooperation is twofold: the facilitation of the collection of visa applications and of data; , and a good territorial coverage of the third-country concerned. The mentioned provision can also be interpreted within the context of another similar obligation imposed by Art. 5(4) VC on the Member States. This regards cooperation for the sake of preventing a situation where an application cannot be examined and decided upon because of the absence of a competent consulate in the relevant third-country.

As regards the specific forms of cooperation, other than the Local Schengen Cooperation, which will be dealt with later on, a Member State is represented by another Member State in a limited manner when the latter is responsible solely for the collection of applications and the enrolment of biometric identifiers on the former's behalf (Art. 9(1) VC). The available data on the consular presence and representation of Member States do not indicate if a given representation is full or limited. This makes it impossible to evaluate to what extent this form of cooperation is used by the Member States. There is only one relevant conclusion that can be drawn from the abovementioned list of Member States' consular presence in third countries: the representation as such is widely used (even if not sufficiently enough to solve the problem of consular coverage) by certain Schengen States.

The concepts of "co-location" and of "Common Application Centres" (CACs) are both based upon the idea of using a single location for receiving visa applications without any redistribution of consular competences among Member States. Only a few visible differences between these two concepts can be identified from the Visa Code: while during "co-location" the consular premises and equipment of one Member State are used by consular staff of (an)other Member State(s), in case of "Visa Application Centres" all the relevant (including human) resources are pooled in a ("neutral") building other than a consulate of a Member State, usually in a place where consular representations issuing visas are

[30] See OJ C 115, 4.5.2010, p. 27. Already the previous multiannual programme in the area of freedom, security and justice, the so-called Hague Programme, included a reference to this dual approach advocating the harmonisation of national legislation, on the one hand, and the harmonisation of handling practices at local consular missions, on the other (see OJ C 53, 3.3.2005, p. 7).

[31] OJ C 115, 4.5.2010, p. 27.

entirely absent.[32] The Stockholm Programme puts particular emphasis on the establishment of Common Visa Application Centres as a part of regional consular cooperation and encourages the Commission and the Member States to set up such centres. It is, therefore, worth elaborating on their rationale, their prospects for the future and the progress made in the first three years after the adoption of the programme.

3.1. Common Visa Application Centres

The idea of setting up common visa application centres emerged within the context of the development of the Visa Information System and the introduction of biometrics. With the establishment of such centres, Member States would not need to install the necessary equipment for collecting biometric identifiers in every consular office.[33] Despite this initial link to the technical challenge, the establishment of CACs can have far-reaching positive consequences for the advancement of a common European visa policy. Already at an early stage of reflection on this issue, four main benefits of creating one central access for visa applications have been identified: cost-reduction through pooling and sharing human and other resources; facilitation with regard to meeting data protection requirements (increased security and better protection of personal data); reduction in visa shopping; and improvements in the harmonized implementation of a Common Visa Policy.[34]

With regard to countering visa-shopping through one single access for all visa applications for two or more Schengen Member States, evidence from the Belgian-Swedish "Maison Schengen" in Kinshasa suggests that those Schengen Member States that do not participate in a CAC, experience a rise in the number of visa applications since they remain the alternative attraction poles for "visa shoppers".[35] Although with the full roll-out of the Visa Information System (VIS) visa shopping, in the form of multiple visa applications by the same person, will be easily detected,[36] CACs still have the capacity to counter another form of visa shopping, which consists in lodging applications at those consulates where the chances of getting a visa is higher than at the consulate of the country of main destination. The pooling of human resources will most probably lead, over the long terms, to the harmonisation of visa practices thus obviating the risk that certain consulates become the targets of increased numbers of visa applications. This aspect is clearly linked to the aforementioned fourth benefit of CACs, which is an improvement in the implementation of Common Visa Policy. Member States can move towards the uniform application of the code, which is the precondition for a truly *common* visa policy in the Schengen area, by sharing, on a daily basis, experiences in the implementation of the Visa Code, leaving broad discretion to the Member States with regard to such important issues as: demanding "supporting documents"; risk assessment; the issue of multiple-entry

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[32] See Council of the European Union, 11821/1/07, REV 1, p. 3: "COM also recalled the difference between "co-location", i.e. a Member State hosts (an)other Member State(s) at its premises, and a CAC, where a new centre is set up in a place where there is no consular representation issuing visa."

[33] Proposal for a Regulation of the European Parliament and of the Council amending the Common Consular Instructions on visas for diplomatic missions and consular posts in relation to the introduction of biometrics including provisions on the organisation of the reception and processing of visa applications, 31.5.2006, COM(2006) 269 final, p. 2.

[34] See Study for the Extended Impact assessment of the Visa Information System, Final Report, December 2004 EPEC, p. 31.

[35] Tiri, G. (2011) Visa policy as migration channel in Belgium, European Migration Network, Belgian Contact Point, p. 54, Brussels, Belgium.

[36] According to the eighth progress report of the European Commission on the development of the Visa Information System (COM(2012) 376 final of 11.7.2012, p. 8), between January and December 2011 "468 cases of potential visa shopping – in which refused applicants lodged a new visa application - were detected in the VIS. One of these cases concern five visa applications lodged by the same person in different consular posts. Two cases concerned four applications and seven cases concerned three applications. The remaining 458 cases contained two applications each. In one case, three different consular posts were involved over a period of four weeks and were able to link the applications together." The ninth (and the last) report of the Commission from 25.4.2013 (COM(2013) 232 final) does not provide any statics in this regard.

visas; etc. However, in order to harmonise the visa procedures, it is necessary that apart from receiving applications at such centres, Member States process and decide on them at the same place. The relevant provision from the Visa Code (Art. 41(2)) does not restrict the scope of CACs only to receiving applications. It is up to Member States to decide if they grant their staff deployed at the CACs with the relevant mandate to decide on the issuance of visas. If this happens on a regular basis, then there will be only one step to take towards a Common European Issuing Mechanism. This implies the setting up of common consular authorities in third countries. All Schengen Member States will be represented at one place, issuing common Schengen visas based on uniform criteria for all applicants.[37]

3.1.1. Post-Stockholm evaluation

The progress made in respect to establishing CACs in third countries after the adoption of the Stockholm programme is, however, limited even if, as illustrated in the table below, the European Commission foresees each year under Community Actions of the External Borders Fund a solid amount of funding for the setting up and further development of common visa application centres:

[37] Cf.: Communication from the Commission to the European Parliament and the Council, An area of freedom, security and justice serving the citizen, COM (2009) 262 final of 10.6.2009, p. 19.

Category 1 of Community Actions of the External Borders Fund 2007-2013: **Setting up and further development of "common visa application centres"**[38]					
*Year**	*Indicative total amount*	*Indicative minimum EU funding per project*	***Community Actions grants awarded***		
			Beneficiaries	**Project Title**	**Amount**
2008 (*Pre-Stockholm*)	€ 4,000,000	Min: € 250,000 Max: € 2,000,000	BE	Schengen Visa Application Centre **Kinshasa**	**€ 1,880,550**
			PT	Common Visa Application Centre in **Cape Verde**	**€ 1,551,551**
2009 (*Pre-Stockholm)*	€ 2,800,000	€ 500,000	No grants on CAC's awarded		
2010	€ 3,000,000	€ 750,000	BE & PT	Maison Schengen **Kinshasa**	**€ 1,753,321**
			PT	Further development of the common Visa Application centre in **Cape Verde**	**€ 852,982**
2011	N/A	N/A	No grants on CAC's awarded[39]		
2012		€ 500,000	PT	Common Visa Application Centre in **Praia, Cape Verde**	**€ 626,528**
2013		€ 500,000			
2014		€ 500,000			

* These are the years when the grants were awarded.

As this table shows, in the post-Stockholm years the total funding of € 3,232,831 has been accorded to two already existed CACs in Kinshasa (DRC) and Praia (Cape Verde). The former was established by Belgium, in cooperation with Sweden and Portugal, in April 2010.[40] As Belgium represents Austria, the Czech Republic, Finland, France, Estonia, Hungary, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Portugal, Slovenia and Sweden, the Maison Schengen in Kinshasa is a good example of a successful CAC. It, after all, enables the introduction of visa applications and/or the enrolment of biometric identifiers[41] at one single place for a total of 16 Schengen Member States,[42]

[38] The table synthesises the data provided by the COM DG Home Affairs on: http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/external-borders-fund/transnational-actions/index_en.htm

[39] See Council of the European Union , Doc. 11369/11 of 16 June 2011, p. 1: "COM, while issuing a positive assessment of the CCV (Centro Comum de Vistos - Common Visa Centre, in Praia) stressed that it could not be considered as a Common Application Centre (CAC), in accordance with Article 41(2) of the Visa Code, as only Portuguese staff were employed; this was contrary to the requirements of that Article, according to which staff from two or more Member States must be pooled in order for a CAC to be established. Consequently, it was not eligible for financing by the European Borders Fund." The document is available on:

http://www.montesquieu-institute.eu/9353000/1/j4nvgs5kjg27kof_j9vvhfxcd6p0lcl/vj6ipnn3ffzr/f=/11369_11.pdf

[40] See Commission Staff Working Paper Accompanying the Communication from the Commission to the European Parliament and the Council Annual Report on Immigration and Asylum (2010), COM, 10772/11 ADD 1 of 26 May 2011, p. 46.

[41] BE enrols them for Germany.

[42] Commission Staff Working Paper Accompanying the Communication from the Commission to the European Parliament and the Council 3rd Annual Report on Immigration and Asylum (2011), 10950/12 ADD 1 of 12 June 2012, p. 28. See also: http://www.schengenhouse.eu/ as well as the List of Member States' consular presence (DG HOME).

and, in only 2012, it received almost 15,000 short-term visa applications.[43] In the same vein, the Common Application Centre in Chisinau, set up at the Hungarian Embassy in 2007, received, in 2012, more than 17,500 Schengen visa applications for 15 Schengen Member States plus Croatia.[44] As regards the CCV **(**Centro Comum de Vistos - Common Visa Centre) in Praia, Cape Verde, it was set up in May 2010 by Portugal, in collaboration with Belgium and Luxembourg, and currently receives short-term visa applications (more than 9,000 in 2012 and 2011, and almost 10,000 in 2010) for the aforementioned countries as well as for Austria, the Czech Republic, Finland, Slovenia and Sweden.

Despite the seeming success of the three abovementioned CACs, the Schengen Member States seem to be hesitant with the establishment of more such centres in third countries. Due to the lack of recent pertinent information on this issue, one can only speculate about the aforesaid attitude of the Member States, for which the analysis of relevant *travaux préparatoires* provide some interesting background information. During the discussions on the introduction of a relevant clause on CACs in the Common Circular Instructions, there was no clear understanding among Member States about the added value of such centres, the difference between the latter and co-location, and the costs related to their establishment.[45] Sceptics warned against the assumption that CACs would solve all existing problems in every location, favoring instead full (and not limited) representation as a better option for extending the consular presence on the ground.[46] It was also suggested that the outsourcing of certain tasks to external service providers was the only viable solution: this given the problems encountered by Member States' consular representations, with regard to the management of large or increased flows of applicants, and administrative rigidity, which made it difficult to enlarge consular premises and to maintain space,.[47] Besides, there was no clear sense of the tasks of CACs: while certain Member States would possibly accept participation in a CAC with the sole purpose of receiving applications, others – thinking of Chisinau – were in favour of carrying out full processing in the place where the application had been lodged; it was said that the mere reception of applications with a view to forwarding them to relevant consulates would entail high costs plus security and logistic problems relating to sending applications, stickers, and passports from one location to another place, perhaps to another country.[48] These discussions also revealed the lack of initiative among Member States, some of them saying that they would be interested in participating in a CAC, if others would take the lead.[49]

The same attitude might have persisted even six years after those discussions, and many of the challenges with regard to CACs (and possibly also with regards to future Common Issuing Mechanism), need effective responses if the Union wants to move towards a new stage of Common Visa Policy, as declared in the Stockholm Programme. This is particularly true if there are large numbers of applications, appointments, interviews, etc. at one single place. In any event, the real reasons for any hesitation, as well as possible solutions, might be reflected in the Commission Communication on Regional Consular Cooperation, originally due in 2011, according to the Stockholm Action Plan. The delay in its publication might even help. After all, the experience in three and a half years since Stockholm and six years since the establishment of the first CAC will certainly help the relevant stakeholders in designing better solutions for problems and challenges.

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43 http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index_en.htm

44 Ibid. See also: www.cac.md More detailed analyses on the CAC in Chisinau as well as on CACs in general, see in: Wesseling M. and Boniface, J. (2011). New Trends in European Consular Services: Visa Policy in the EU Neighbourhood, in: *Consular Affairs and Diplomacy*, Melissen J. and Fernández A.M. (eds.), Diplomatic Studies, p. 131, Brill, Leiden, The Netherlands.

45 See: Council of the European Union, 11821/1/07, REV 1.

46 Ibid., p. 2.

47 Ibid., p. 4.

48 Ibid., p. 2.

49 Ibid., p. 3.

3.2. Local Schengen Cooperation

As stated above, one of the modes of institutional cooperation on the ground is "Local Schengen Cooperation" (LSC), the primary legal basis for which is provided for in Art. 48 VC. This clause obliges ("shall"-clause) Member States' consulates and the Commission to cooperate within each jurisdiction.

3.2.1. Main elements of LSC

The purpose of Local Schengen Cooperation is a harmonised application of the common visa policy, which, according to Art. 48(1) VC, has to be achieved in two steps:

- the initial assessment of the needs with regards to: translating the application form into the language of the host country;[50] and establishing a harmonized list of supporting documents;[51] an exhaustive list of travel documents issued by the host country; and common criteria for the optional exemption from the visa fee;[52]
- in the case of confirmation of the needs noted above, the establishment of such lists and criteria by relevant decisions of the European Commission taken within the framework of the comitology procedure.[53]

The establishment of harmonised lists of supporting documents is of particular importance. As mentioned above, the Visa Code only provides a non-exhaustive, optional ("may"-clause) list of such documents. This means that Member States have a wide discretion in this respect and this leads to extensive differences in the documents required from visa applicants in one particular country by different Schengen consulates[54], triggering visa-shopping and the different treatment of visa applicants.[55]

Apart from the mandatory establishment of common information sheets on the rights derived from a Schengen visa and on the conditions for applying for it[56], the LSC has also to serve as an information exchange platform. It is an information exchange platform with regard to: monthly visa statistics;[57] the assessment of migratory and/or security risks;[58] the selection of external service providers[59]; accreditation of commercial intermediaries and withdrawal of such accreditation[60]; information on cooperation with transport companies; and information on insurance companies[61]. Moreover, within the LSC, the Member States have to ensure that the service fee charged by external service providers

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50 Cf. Art. 11(5) VC.

51 Cf. Art. 14 and Annex II of the Visa Code.

52 Cf. Art. 16(5) VC.

53 Art. 52 VC and the Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, OJ L 55, 28.2.2011, p. 13–18.

54 See, for instance, I. Sushko, O. Suprunenko, O. Sushko, M. Kuzio, The EU Visa Policy in Ukraine, Independent Monitoring Findings 2012, pp. 22-23.

55 Cf. Recital 18 VC.

56 Art. 48(2) VC.

57 Art. 48(3)(a) VC.

58 Art. 48(3)(b) VC.

59 Art. 43(3) VC.

60 Art. 45(5) VC.

61 Art. 48(3)(c)-(d) VC. See also the Commission Decision establishing the Handbook for the organisation of visa sections and local Schengen Cooperation of 11.6.2010, C(2010) 3667 final, p. 16 et seq.

duly reflects the services offered and is adapted to local circumstances. Within this context, another goal of the LSC is the harmonisation of the service fees.[62]

As regards the main modus operandi of the LSC, operational issues have to be dealt with at regular meetings among Member States and the Commission, convened – as a rule – by the Commission within each jurisdiction.[63] There is also the possibility of organising single-topic meetings, as well as for setting up of sub-groups with the aim of studying specific issues within LSC.[64] The dissemination of information works by circulating locally and forwarding summary reports of LSC meetings to Member States' central authorities. Based on the said reports of the Commission, the annual reports to the European Parliament and the Council have to be drawn up within each jurisdiction.[65] The Commission, synthesizing LSC country reports covering 2010-2011 and 2011-2012,[66] presented in November 2012 the Report on the functioning of Local Schengen Cooperation during the first two years of the implementation of the Visa Code.[67] These reports are valuable sources for the assessment of the post-Stockholm progress of the LSC functioning.

3.2.2. Post-Stockholm Evaluation

Currently, out of 147 countries where Schengen Member States have their consulates,[68] LSC is fully operational in only 63 countries.[69] In the remaining 84 countries LSC is either non-existent or it does not work properly due to: the absence of an EU Delegation (EUD) via which the Commission performs its LSC tasks; the non-appointment of an LSC contact point by a local EUD; the lack of active participation of a contact point in the LSC; or the limited consular presence of Schengen Member States in a given location (one or two consulates only).[70]

As regards the implementation of concrete operational tasks of the LSC, especially in respect to supporting documents, the needs assessment conducted within the Local Schengen Cooperation in 16 countries led to the adoption, from 4 August 2011 to 26 March 2013, of six relevant Commission Decisions. These established the list of supporting documents to be presented by visa applicants in China, Saudi Arabia, Indonesia, Vietnam,[71] Bosnia-Herzegovina, Sri Lanka, Turkey,[72] Egypt,[73] the United Kingdom,[74] Chile, Kazakhstan, Nicaragua, Nigeria,[75] Jordan, Kosovo and the USA.[76] The fact

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62 Art. 17(3) VC.

63 Art. 48(4) first indent of the VC.

64 Art. 48(4) second indent the VC.

65 Art. 48(5) VC.

66 Council of the European Union, 5359/13, ADD 1 and ADD 2 of 17 January 2013.

67 COM(2012) 648 final.

68 See the List of Member States' consular presence, *op cit.* The term "consulate" is used here in its Art. 2(9) VC understanding, which is the following: "'consulate' means a Member State's diplomatic mission or a Member State's consular post authorised to issue visas and headed by a career consular officer as defined by the Vienna Convention on Consular Relations of 24 April 1963."

69 The criterion of the full operation is mainly based on the fact that an LSC contact point is active in a given jurisdiction. See Council of the European Union, 5359/13, ADD 3 of 17 January 2013. See also COM(2012) 648 final, pp. 3-4 and 5359/13, ADD 2, pp. 2-3.

70 COM(2012) 648 final, p. 4.

71 Commission Decision C(2011) 5500 final of 4 August 2011.

72 Commission Decision C(2011) 7192 final of 13 October 2011.

73 Commission Decision C(2011) 1152 final of 27 February 2012.

74 Commission Decision C(2012) 4726 final of 27 February 2012.

75 Commission Decision C(2012) 5310 final of 6 August 2012.

76 Commission Decision C(2013) 1725 final of 26 March 2013.

that 4 out of 10 top countries where the most Schengen visa applications are lodged/issued[77] have been covered by these decisions can be assessed positively. Moreover, in four other top-10 countries – namely in the Russian Federation, Ukraine, Belarus and India – the adoption of the harmonized lists is at a relatively advanced stage, being currently subject to exchange between the LSCs and the Visa Committee.[78] In Morocco too, the process of list harmonization has been in progress since mid-2010. One of the main problems that has been identified has been the classification of different travel purposes and of categories of travellers.[79] In Algeria, meanwhile, a task force headed by France has been designated to propose a harmonised list.[80]

A less positive picture is given in the Commission's 2012 Progress Report with regard to the remaining tasks of LSCs: thus no considerable progress has been made within existing LSCs with regard to the establishment of common criteria relating to the optional exemption from the visa fee; charging similar visa fees in a local currency; and drawing up common information sheets.[81] Even if the existing LSCs have been effectively used by local consulates as information exchange platforms,[82] the major problems remain the follow-up. The common reports often lack operational conclusions, and information dissemination, as the participating consulates do not always forward the meeting reports to their respective central authorities. This leads to a knowledge gap about the implementation of the Visa Code and the deficient assessment of the complaints from third countries.[83]

4. Visa Facilitation Agreements

It should be mentioned, right from the outset, that after Regional Consular Cooperation, the next Stockholm priority in the field of Common Visa Policy is the conclusion of Visa Facilitation Agreements (VFAs). This speaks for the importance these agreements are accorded in the Common Visa Policy of the Union.[84] In this respect, the European Council invited the Commission and Council "to continue to explore the possibilities created by the conclusion of visa facilitation agreements with third countries in appropriate cases."[85] Moreover, throughout the text of both the Stockholm Programme and the Stockholm Action Plan, and in particular under the topic "Agreements with third countries", the conclusion of VFAs with Eastern Partnership countries, the negotiation of a revised VFA with the Russian Federation in parallel to the full implementation of the existing one, as well as the monitoring of the implementation of all other VFAs are among the major objectives set by the programme and the action plan.

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77 According to the COM visa statistics, between 2009-2011, the top 10 countries have been: 1. Russia; 2. Ukraine; 3 *China;* 4. *Turkey*; 5. Belarus; 6. India; 7. Morocco; 8. Algeria; 9. The *United Kingdom*; 10. *Saudi Arabia*. European Commission, Overview of Schengen Visa Statistics 2009-2011, p. 11.

78 See on the Russian Federation in: 5359/13, ADD 2, p. 166, on Ukraine in: 5359/13, ADD 1, p. 191, on Belarus in: 5359/13, ADD 2, p. 19, on India in: 5359/13, ADD 1, p. 85.

79 5359/13, ADD 2, p. 137.

80 5359/13, ADD 2, p. 7.

81 COM(2012) 648 final, p. 6.

82 Ibid.

83 Ibid., p. 5.

84 See in general on EU Visa Facilitation Agreements among others: Peers, S. (2012), Visa Facilitation, in: *EU Immigration and Asylum Law (Text and Commentary): Second Revised Edition*, Volume 1: Visas and Border Controls, Peers, S., Guild, E. and Tomkin, J. (eds) Immigration and Asylum Law and Policy in Europe, p. 315 et seq., Martinus Nijhoff Publishers, Brill, Leiden, The Netherlands. Gromovs, J. (2011), EC Visa facilitation and readmission agreements- state of play and perspectives, in: *External Dimensions of European Migration and Asylum Law and Policy / Dimensions Externes du Droit et de la Politque d'Immigration et d'Asile de l'UE*, Maes, M. Foblets, M.-C. and De Bruycker, Ph. (eds), pp.191-219, Bruylant, Brussels, Belgium.

85 OJ C 115, 5.4.2010, p. 17.

Apart from the EU-Georgia VFA - that is clearly a first-generation Visa Facilitation Agreement and that deserves to be analysed in the first instance - four other amended or new agreements with Ukraine, Moldova, Cape Verde and Armenia have been signed since Stockholm and two more are being negotiated with the Russian Federation and Azerbaijan.[86] Despite the willingness of the EU to negotiate a VFA with Belarus and the repeated requests from the Commission and Council in 2011-2013, the Belarusian authorities have not yet responded to them.[87] Finally, negotiating a visa facilitation agreement is also part of the recently agreed EU Mobility Partnership with Morocco.[88]

As the amended EU-Ukraine, EU-Moldova VFA and the recently signed EU-Armenia VFA[89] show clear difference between these hypothetically second-generation VFAs and the previous ones while the EU-Cape Verde agreement, signed on 26 October 2012,[90] is almost identical to the former,[91] it is worthwhile analysing these three agreements after evaluating the EU-Georgia VFA.

4.1. EU-Georgia Visa Facilitation Agreement: do "first-generation" VFAs work?

The first Visa Facilitation Agreement, officially concluded[92] after the adoption of the Stockholm Programme, was the EU-Georgia VFA,[93] which entered into force on 1 March 2011. It is a typical first generation VFA such as those concluded by the European Community with the Russian Federation,[94] Ukraine,[95] Serbia,[96] Montenegro,[97] FYRM,[98] Bosnia and Herzegovina,[99] Albania[100] and Moldova[101] in 2007. As in other cases, the main characteristics of the EU GE VFA are: the simplification and the clear determination of the documentary evidence regarding the purpose of the journey for certain categories of travellers;[102] the attempt to facilitate the issuance of multiple-entry visas (MEVs) for different categories of persons; the general reduction of the visa fee from EUR 60 to EUR 35 and the

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86 COM SWD(2013) 88 final, 20.3.2013, p. 11.

87 See recent developments on: http://soderkoping.org.ua/page41516.html and in: EC, Memo of 20.3.2013, ENP Package-Belarus.

88 Council of the European Union, 6139/13, ADD 1 of 8.4.2013, p. 14.

89 The agreement was signed on 17 December 2012. See Council of the European Union, 17866/12, PRESSE 538 from 17.12.2012.

90 Council of the European Union, 14866/12, PRESSE 424 from 29.10.2012.

91 COM(2012) 560 final of 25.9.2012.

92 Even though the text of the agreement was negotiated and agreed upon in 2009, the official procedures on the side of the EU started remarkably the next day of the publication of the programme, i.e. on 5.5.2010 with the Commission Proposal for a Council Decision concerning the conclusion of the Agreement between the European Union and Georgia on the facilitation of the issuance of visas (COM(2010)198 final). After its signature on 17.6.2010 and the consent from the European Parliament on 14.12.2010, the Council adopted the aforementioned decision on 18.12.2011.

93 OJ L 52, 25.2.2011, pp. 34-54.

94 OJ L 129, 17.5.2007, pp. 27-34.

95 OJ L 332, 18.12.2007, pp. 68-76.

96 OJ L 334, 19.12.2007, pp. 137-147.

97 OJ L 334, 19.12.2007, pp. 109-119.

98 OJ L 334, 19.12.2007, pp. 125-135.

99 OJ L 334, 19.12.2007, pp. 97-107.

100 OJ L 334, 19.12.2007, pp. 85-95.

101 OJ L 334, 19.12.2007, pp. 169-179.

102 Close relatives, members of official delegations, students, pupils, post-graduates, persons traveling for medical reasons, journalists, business people, members of the professions, drivers conducting international cargo and passenger transportation services, representatives of civil-society organisations, participants in scientific, cultural and sporting events, participants in official exchange programmes organised by twin cities, and persons visiting military and civil burials. See Art. 4 of the agreement.

full visa fee waiver for 12 categories of persons; and finally, the reduction of the duration of the visa application procedure from 15 to 10 calendar days and the possibility of further reduction of the processing time to 2 working days or less in urgent cases[103].

Despite the aforementioned similarities with other VFAs, there are still some noteworthy differences between the EU GE VFA and its predecessors from the region. So, for instance, unlike the 2007 EU VFAs with Ukraine and the Russian Federation, the EU Georgia agreement includes the representatives of professions and of civil society organisations among the categories of persons in relation to whom the facilitations with regard to documentary evidence and the issuance of multiple-entry visas apply.[104] The latter are even exempted from the visa fee.[105] This is, however, not the case for members of profession unlike the EU Moldova agreement. *Apropos* the mandatory exemption from the visa fee, it should be noted that while according to 2007 VFAs with Moldova and Ukraine this rule applies to children under the age of 18 and dependent children under the age of 21[106], the EU VFA with Georgia exempts from the visa fee only children below the age of 12.[107]

Further regression *vis-à-vis* other first-generation VFAs with Eastern Partnership countries is the regulation of the issuance of multiple-entry visas to business people, representatives of business organisations and journalists, who regularly travel to the Schengen Member States: while based on the 2007 EU VFAs with Ukraine and Moldova the aforementioned categories can obtain multiple-entry visas, which are valid for up to five years, Georgian business people and journalists can initially obtain only multiple-entry visas valid for up to one year,[108] and even this is conditional upon the previous use of a Schengen visa. Surprisingly, in relation to business people the corresponding provision of the Visa Code is more progressive, providing for the possibility of multiple-entry visas valid for up to five years.[109]

For the rest, the EU Georgia Visa Facilitation Agreement has the same weak points as other first-generation VFAs, namely the limited impact on: (a) the intricate paperwork which the issuance of a Schengen visa is associated with; (b) the length of visa procedures; and (c) the issue of multiple-entry visas.

With regard to the paperwork, the only facilitation in terms of providing supporting documents is – as mentioned above a clear definition of what documentary evidence (typically a written invitation or a request from a host) must be presented to justify the purpose of certain types of visits.[110] The documentary evidence relating to conditions of stay and the intention to return to the country of origin, which is more difficult to procure, is, however, entirely excluded from the subject matter of all Visa Facilitation Agreements. Moreover, in Georgia, even before the entry into force of the VFA, Schengen Member States' consulates were demanding from almost all categories of persons covered by the agreement the same set of documents relating to the purpose of the journey as defined in the agreement. Therefore, the impact of the latter on solving intricate paperwork can be considered as being very limited.[111]

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[103] Art. 8 of the EU GE VFA.

[104] See Arts. 4 and 5 of the EU GE VFA.

[105] Art. 6(3)(j) of the EU GE VFA.

[106] Art. 6(2)(k) EU MD VFA and Art. 6((4)(m) EU UA VFA.

[107] Art. 6(3)(b) EU GE VFA.

[108] Art. 5(2)(i) EU GE VFA.

[109] Art. 24(2)(a) VC.

[110] The documentary evidence for journeys undertaken for tourism or for "private reasons" (except for visits of close relatives is not covered by any VFAs.

[111] EI-LAT Report, 2012, *op cit.*, pp. 48-49.

Similarly, the length of visa application procedures is only shortened by five calendar days. So, instead of fifteen calendar days, in which the consulates have to decide on visa applications according to the Visa Code,[112] the decisions on visa applications according to the VFAs shall take no more than ten calendar days.[113] Also, consulates of the Member States may extend this period for up to thirty calendar days "when further scrutiny of the application is needed".[114] Since modalities for lodging an application are not subject to the VFAs either, the relevant Visa Code rules apply in every case. This means that consulates may add to the above-mentioned period of time two more weeks: they can require the applicants to obtain an appointment to lodge their applications.[115] It should be noted that in Georgia, even before the entry into force of the VFA, visa processing time for almost all the categories of persons who fall under the scope of the agreement amounted to only 3-4 days. So the actual problem on the ground is apart from the time spent on procuring all the necessary supporting documents, the lodging of visa applications during peak season. In peak season applicants have either to stand in long queues or to wait for three to four weeks (as opposed to the two weeks maximum according to the Visa Code) to simply lodge the application.[116]

Finally, problems relating to the facilitation of the mobility of *bona fide* travellers such as business people, students, researchers, etc. have not been entirely resolved either by the first-generation VFAs, as the latter leave broad discretion to consulates of the Member States to issue multiple-entry visas for "*up to* 5 years"[117] or "*up to* 1 year"[118], which can be (and has been often) restrictively used. The possibility of the restrictive application of the relevant provisions is all the more problematic in relation to those categories of persons (and in the case of Georgia most people to whom the facilitations apply belong to this category) who according to the VFAs can obtain two to five-year multiple-entry visas only under the precondition that they have previously used one-year multiple entry visas.[119]

The available statistical data give a mixed picture about the possible impact of the EU-GE Visa Facilitation Agreement on the dynamics of the visa applications, the issued C visas and the share of the multiple-entry visas in the issued C visas. Out of eleven Schengen Member State consulates in Georgia (Tbilisi), only four (IT,[120] FR,[121] CH[122] and LT[123]) saw an increase in visa applications after the entry into force of the EU-Georgia VFA (see graph No 1 in Annex). This also corresponds to an increase in the issued visas by the same consulates.[124] Italy and Lithuania are interesting cases as the increase in visa applications and issued visas has been accompanied by the ascending positive trend with regard to the share of multiple-entry visas in the issued C visas (see graphs 1 and 2 in Annex). From 2010 to 2012, the share of MEVs for all the C visas issued has significantly increased at the Dutch consulate in Tbilisi: 26.9% of MEVs out of all issued C visas in 2010, 39.5% MEVs in 2011,

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112 Art. 27 VC.

113 See, for instance, Art. 7(1) of the EU GE VFA.

114 Art. 7(2) of the EU GE VFA.

115 Art. 9(2) VC.

116 EI-LAT Report, 2012, p. 50.

117 Art. 5(1) of the EU GE VFA.

118 Art. 5(2) of the EU GE VFA.

119 Art. 5(3) of the EU GE VFA.

120 Represents Malta.

121 Represents Island and Norway.

122 Represents Lichtenstein and Austria.

123 Represents Slovakia and Slovenia.

124 This trend is also validated in the light of the visa applications lodged at those consulates since 2007. See the relevant statistics in: EI-LAT Report, 2012, *op cit.*, pp. 105-109.

and 47.69% of MEVs in 2012. The same trend, though less salient, can also be observed at the Greek and German consular posts, the latter being the largest receiver of Schengen visa applications in Tbilisi. Despite these positive trends (see especially graph No. 2 in Annex) the caution is warranted when assessing the specific impact of the VFA on the issuance of the multiple-entry visas in Georgia: on the one hand, the available data are too general and do not provide specific information on the categories of visa holders nor is their data about the validity periods of the issued MEVs; on the other hand, the VFA entered into force against the background of the ongoing implementation of the provisions of the Visa Code which codified the rules for the issue of multiple-entry visas.

4.2. New Agreements with Ukraine, Moldova and Armenia – moving towards "second-generation VFAs"?

One of the main reasons behind the initiation of the process of amending the existing Visa Facilitation Agreements in only two and a half years after their entry into force[125] was linked to their poor implementation on the ground, triggering particularly the problems in obtaining long-term multiple-entry C visas, whose persistence in Ukraine has been well documented in the 2012 Report of Europe Without Borders "EU Visa Policy in Ukraine, Independent Monitoring Findings". According to the report, despite the gradual increase in numbers of the multiple-entry visas issued, the Member States' consulates are still hesitant when it comes to issuing multiple-entry visas for more than one year. Their share in the total number of the issued visas is marginal (3.7% in the reporting period).[126] Moreover, almost one-fourth of all multiple-entry visas issued in Ukraine in the reporting period were valid for up to three months.[127] Unless applicants' passport validity period was to expire after the last intended date of departure from Member State territory[128] this would amount to a violation of Art. 24(2) of the Visa Code, which sets the minimum validity period of any MEV at 6 months.

The amended EU-UA and EU-MD VFAs try to solve the aforementioned problems with MEVs by limiting the discretion of Schengen Member States: the formulas "up to five years" and "up to one year" have been replaced by a definite "five years" and "one year".[129] In the future, family members of Moldovan and Ukrainian immigrants in the EU, family members of EU citizens, business people and representatives of business organizations, as well as journalists and their technical crew have, in principle, to be issued with MEVs for five years. Similarly, the remaining categories of persons covered by the respective VFAs, when obtaining an MEV for the first time, must be issued with a visa valid for no less than one year. There are still safeguard clauses applicable in cases where a travel document has a shorter validity period or where the intention to travel frequently and regularly is manifestly limited to a shorter period: this can be invoked by the Schengen consulates in issuing MEVs valid for, respectively, less than five years or for less than one year.[130] However, as the purpose

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[125] The EU-Moldova Joint Committee created according to Art. 12 of the agreement and mainly responsible for the monitoring of its implementation, suggested amending the agreement on 27.5.2010. The Council was asked by the COM on 29.10.2010 for the authorization to start negotiating the amendments and after the green light from the latter given on 11.4.2011, negotiations took place between 13.5.2011 and 14.12.201. The final text of the amendments was initialled on 22.3.2012 and signed on 27.6.2012. The amended agreement entered into force on 1 July 2013 (published in OJ L 168, 20.6.2013, p. 3). Similarly, the process of amending the EU-UA VFA started with the endorcement of amendments and additions to the agreement by the Joint Committee on 5.5.2010. The negotiations as well as the internal EU procedures were carried out in paralell to the process of amending EU-MD VFA (for more details see COM(2012) 266 final of 5.7.2012). The European Parliament gave its consent to the relevant Council Decision on the conluding of amended VFA on 18.4.2012. The amended agreement entered into force on 1 July 2013 (published in OJ L 168, 20.6.2013, p. 11).

[126] Sushko, I. Suprunenko, O. Sushko, O. and Kuzio, M. The EU Visa Policy in Ukraine, 2012, pp. 7, 25 et seq.

[127] Ibid.

[128] Arts. 24(2) ad 12(a) VC.

[129] COM(2012) 266 final, pp. 10-11 and COM(2012) 268 final, pp. 9-10.

[130] Ibid.

of the amendments is to make such cases exceptional rather than the rule, and as a consequence, burden of proof, especially in cases of one-year multiple-entry visas has shifted from applicants to Member States consulates, the amendments can be considered positive step forward in facilitating the mobility of *bona-fide* travellers.

Another positive brought about by renegotiating the existing agreements is the extension of their respective personal scopes. Thus, the amended EU-MD agreement includes additional categories of persons such as: close relatives of EU citizens residing in the territory of the Member State of which they are nationals; and members of technical crews accompanying journalists; and participants in official EU cross-border cooperation programmes. In the future all will benefit from the facilitations provided for in the agreement.[131] In a similar vein, the amended EU-UA VFA included 8 new categories of persons in the agreement.[132] The reason why the list of additional categories in the case of the amended EU-UA VFA is longer compared to the amended EU-MD VFA is the initial limitation of the personal scope of the 2007 EU-UA VFA *vis-à-vis* the 2007 EU-MD VFA.

Along with the fact that Moldovan and Ukrainian biometric service passport holders will be exempted from the Schengen visa requirement,[133] it is worthwhile mentioning another interesting novelty introduced by the amended EU-UA VFA. We refer here to an optional 70 Euro charge, where because of the distance between the applicant's place of residence and the application's submission, the consulate has agreed that a decision on the application will be taken within three days.[134] If implemented properly, this will, indeed, be a step forward even in relation to the Visa Code. This might contribute to a decrease in real visa costs: i.e. travel and accommodation costs, for applicants who have to travel long distances to lodge a visa application in person.

The EU-Armenia VFA is a special case as it is a mix between the agreement with Georgia and the amended agreements with Ukraine and Moldova. The fact that its drafters were inspired by the EU-GE VFA, is demonstrated by the striking similarity between these two agreements with regard to their personal scope.[135] This similarity goes so far that even a grammatical mistake made in the EU-GE VFA – and undetected by the Council and the European Parliament – appears in the corresponding Article of the EU-AM VFA.[136] The only noteworthy difference in the personal scope is that the EU-AM VFA also applies to persons invited by Pan-Armenian organisations registered in the Schengen Member States. They will benefit in future from facilitations with respect to the documentary evidence, the issuance of one-year multiple-entry visas, and the waiver of the visa fee.[137] Finally, as in the case of EU-GE VFA and unlike the amended agreements with Ukraine and Moldova, the EU-AM VFA does not exempt the holders of biometric service passports from the Schengen visa requirement. The most remarkable difference between the EU-GE and EU-AM VFA is related to the issuance of the multiple-entry visas: while the EU-GE VFA like other first-generation VFAs leaves wide discretion to

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131 COM(2012) 268 final, pp. 3, 10-11.

132 Close relatives of EU citizens residing in the territory of the Member State of which they are nationals, participants in official exchange programmes organised by municipal entities other than twin cities, members of the technical crew accompanying journalists, persons accompanying persons visiting for medical reasons, representatives of civil society organisations undertaking trips for the purposes of educational training, seminars, conferences, members of the professions participating in international exhibitions, conferences, symposia, seminars or other similar events, representatives of religious communities, and participants in official EU cross-border cooperation programmes. See COM(2012) 266 final, pp. 3, 8-9.

133 COM(2012) 268 final, p. 12. COM(2012) 266 final, p. 13.

134 COM(2012) 266 final, pp. 3 and 11.

135 Cf. OJ L 52, 25.2.2011, pp. 34-54 and COM(2012) 707 final of 27.11.2012.

136 In Art. 4(1)(g) of the EU-GE VFA and Art. 4(1)(g) of the EU-AM VFA instead of "a written request from (…) organising committees ***of*** trade and industrial exhibitions" it is written "a written request from (…) organising committees ***or*** trade and industrial exhibitions".

137 See Arts. 1(1)(i), 2(5(b) and 6(2)(j) of the EU-AM VFA in COM(2012) 707 final.

the Member States' consulates in respect of the issue of multiple-entry visas, the EU-AM VFA in the style of the amended EU-UA and EU-MD-VFAs limits such discretion, excluding, though, business people, representatives of business organisations as well as journalists from the list of persons who can obtain five-year multiple-entry visas.[138]

On a concluding note, it should be observed that when analysing the aforementioned agreements in the light of the main elements of the first-generation VFAs, the major added value brought about by renegotiating the existing agreements seems to be the limitation of discretion for Schengen consulates with regard to the issuance of multiple-entry visas. Even if the broadening of the personal scope of the agreements is certainly another positive aspect, there is little that is innovative in the new agreements. This might have been the case if, for instance, the concerns relating to the documentary evidence as a main source of the intricate visa procedures had been addressed properly. All this raises the question of whether more should not be done in order "to explore the possibilities created by the conclusion of visa facilitation agreements", as was advocated in the Stockholm Programme.

5. Conclusion

As illustrated above, the emerging paradigm shift in the perception of the EU's common visa policy does not always have a corresponding normative and institutional backing in terms of: clearly defined legal framework; the adequate implementation of the existing rules; or the full use of the opportunities offered by different forms of consular cooperation on the ground.

It is certain that the existing normative framework, i.e. the Visa Code and the Visa Facilitation Agreements, include certain optimal solutions for the existing problems. However, it cannot be expected that they work in practice, as the majority of such solutions are formulated in terms of "may" or in "endeavour" clauses leaving wide discretion for the consulates.

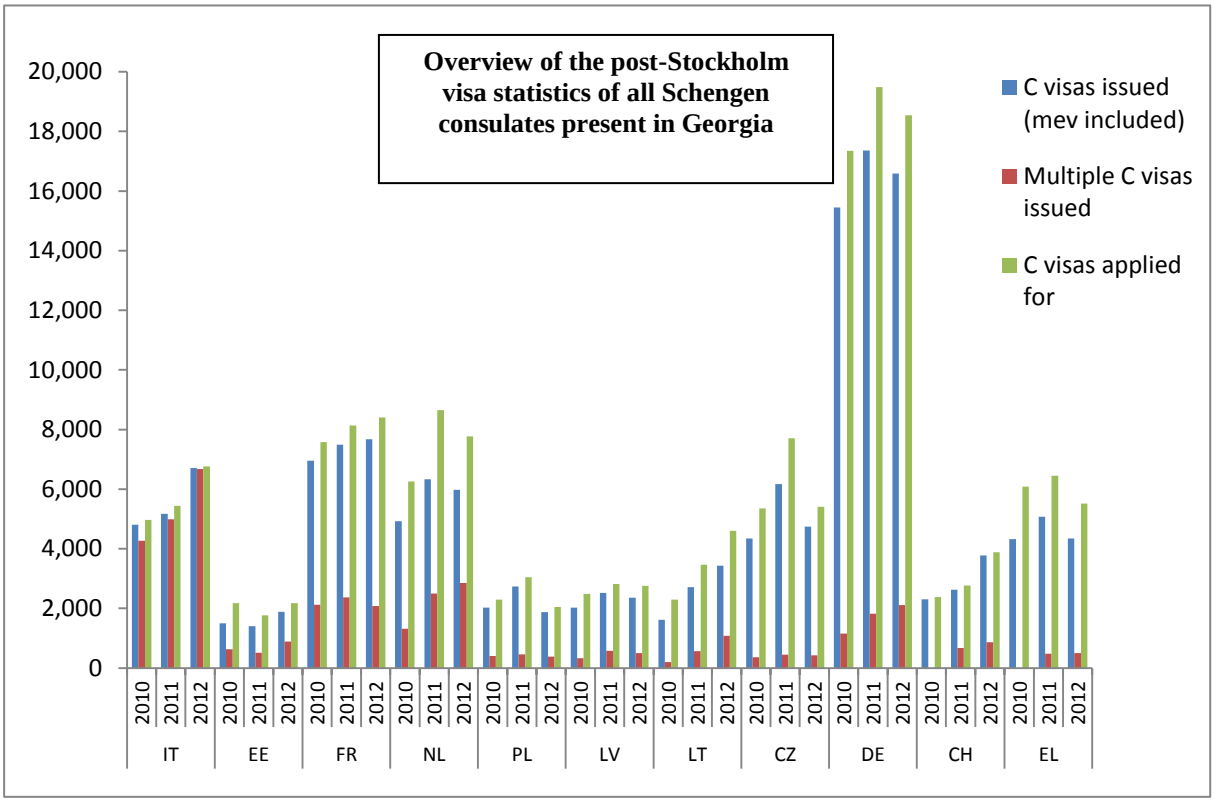
The lack of proper implementation of the existing visa *acquis* seems to be another major problem, which has to be addressed before moving to a next stage in the development of Common Visa Policy: i.e. before modifying the existing rules on the basis of the evaluation of the Visa Code, which is due this year. Apart from strengthening the monitoring and enforcement mechanisms at the EU-level and finding the ways to lessen the administrative burden for often understaffed and overloaded consulates through additional funding or where appropriate, by the outsourcing, the problem of implementation would have been partially solved if one of the major novelties introduced by the Visa Code in Art. 32(3), i.e. the right to appeal against the refusal decision, worked properly. The problem is that the Standard Form for Notifying and Motivating Refusal, Annulment or Revocation of a Visa (Annex VI of the Visa Code), which refused applicants are provided with, is quite minimalistic and does not give refused applicants detailed explanations for refusal decisions. This does not allow applicants, who are, in most cases, "laypersons" with regard to intricate ramifications of the existing visa rules to understand the motives behind the refusal decisions, let alone to consider an appeal. The fact that the right to judicial appeal can only be carried out on the territory of Member States, for which the applicant was refused, hampers further this right.

Finally, it is worthwhile stressing that – as illustrated above – despite the ambitious title "Common Visa Policy," there is still a lot to do in order to achieve a truly *common* policy in this area. This would only come about if visa procedures and practices were fully harmonized, if Member States cooperated much more closely on the ground and had more mutual trust, delegating more readily their own consular competences either to other Member States or to a supranational mechanism such as a common visa issuing mechanism.

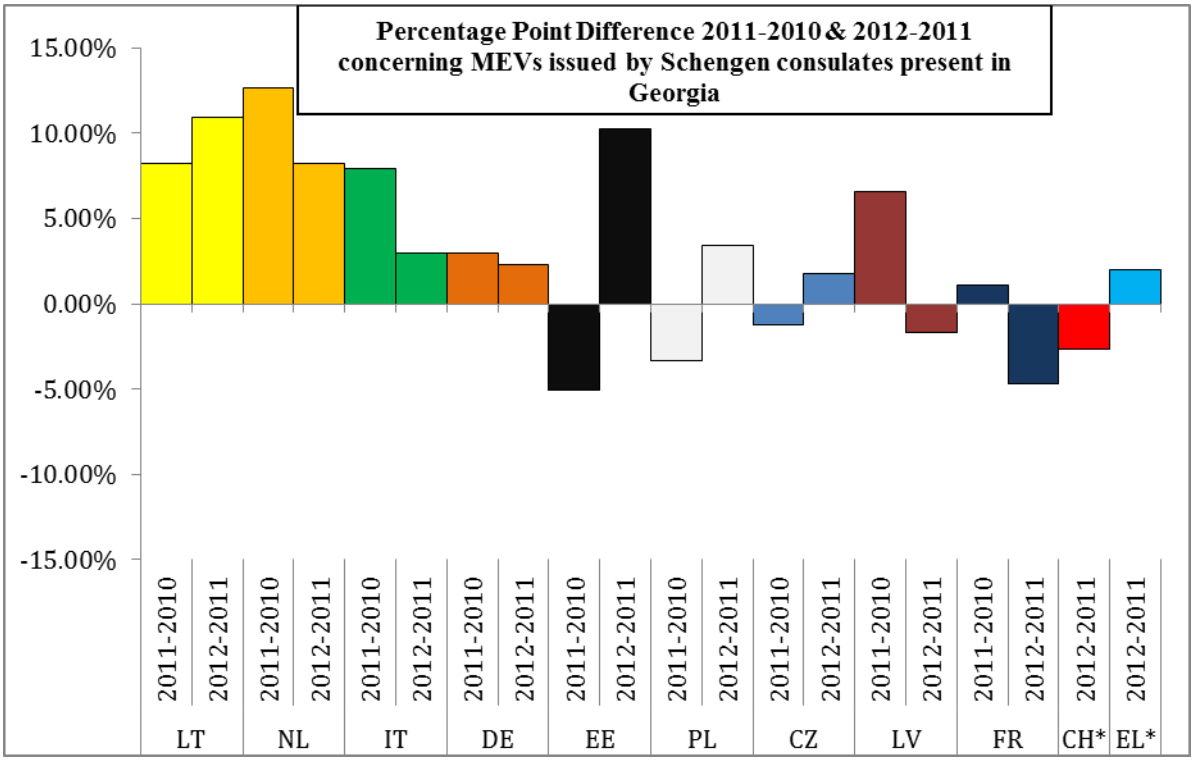
[138] See Art. 5 of the agreement on pp. 11-12 of COM(2012) 707 final.

Annex

Graph No. 1:



Graph No. 2:



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