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Neighbours and Visas

Recommendations for a Friendly
European Union Visa Policy

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European Union Visa Policy

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Introduction

Considered from the perspective of the goals of the European Neighbourhood Policy, the current EU visa policy towards the eastern neighbours of the EU appears disappointing. Support of the freedom to travel could be one of key incentives for the neighbouring countries to undertake democratic and free-market reform. The experience of travellers (tourists, business people, students, traders) changes the mindset moulded by decades of totalitarian regime. Direct contacts and first-hand perception of stable democracy at work help to learn and to apply the model of democracy, civic society, and free-market economy, and provide an important argument for that part of society which has pro-European leanings.

At present, the visa obligation is a serious impediment to travellers: they have to plan their trip well in advance, sometimes wait several weeks for a visa, often travel long distances to the nearest Consulate, wait in line, arrange an interview, cover their own costs and pay a visa fee (equal to a significant part of the monthly salary in many countries), all without a guarantee of getting a visa. The quality of service in Consulates, the transparency of the procedure, and its complexity are seen by citizens of Eastern Europe as a test of the declared friendliness (so strongly emphasised in the European Neighbourhood Policy) against the actual intentions of the EU Member States. Frequent visa refusals and poor service provided to applicants give a strong sense of new barriers being raised in Europe and of second-class treatment. The visa policy in the countries subject to the

visa obligation is the most potent litmus test of the EU policy as it affects everyone planning to travel to an EU Member State. Hence, the image of the European Union in the eyes of third-country nationals of Eastern European countries is largely dependent on the visa policy.

It should be a long-term goal of the EU policy towards the Eastern European countries to lift the visa obligation. This goal must not remain limited to the existing vague declarations (such as those proposed under visa facilitation agreements between the EU and Ukraine or between the EU and Russia) but should rather be translated into a road map: a list of specific conditions and criteria to be met as a guarantee of visa-free travel regime. In the short term, it is necessary to change the system by facilitating the issuance of visas and minimising the complexity of the process.

Part I

Monitoring of the Visa Policies of European Union Member States

The Stefan Batory Foundation Friendly EU Border Programme¹ launched in 2002 featured a 2005 monitoring survey aimed to evaluate the practice of the visa systems of eight selected EU Member States. The project looked at the visa systems of Belgium, the Czech Republic, Finland, France, Germany, Lithuania, Poland, and the United Kingdom. Standard forms were used to conduct over 1,000 direct interviews with randomly selected applicants for Schengen visas, visas of the new EU Member States, and UK visas in Chisinau, Kyiv, Minsk, and Moscow. The survey also included interviews with Consulate staff and with applicants refused a visa². The evaluation of the visa systems was based on measurable indicators, such as the percentage of refused applications, the waiting time for a visa, the number of visits to a Consulate necessary to get a visa, as well as subjective impressions of visa applicants and their perception of visa procedures. The survey was summarised in a report highlighting the similarities and differences in the visa policy pursued by the Schengen countries, the new EU Member States, and the UK.

¹ More about the Friendly EU Border Programme at www.openborders.pl.

² The report can be downloaded from the Reports section of the Friendly EU Border website www.openborders.pl.

Summary of the Monitoring key findings

Inconsistent visa practice of the Consulates of the Schengen Member States

The Schengen system involves a large degree of harmonisation; visa issuance procedures defined in the Common Consular Instructions³ (further referred to as CCI) are applied by all the Member States. However, our monitoring exercise indicated that the practical application of the visa procedures by Consulates of the Schengen Member States is quite diverse. The differences occur both in terms of the legal solutions adopted (if they are provided for by national legislation) and in terms of actual practice.

The differences include, among others, the following:

- procedure of communicating the visa requirements to applicants;
- list of documents and scope of information required for a visa;
- visa application submission procedure (either requiring pre-registration or conducted immediately upon entry to the Consulate);
- practical organisation of the visa procedures resulting in different waiting time for a visa;
- practice of applicant interviews (used either routinely or exceptionally);
- additional countermeasures against illegal migration (such as cash deposits paid by applicants granted a visa or requirement to report back to the Consulate upon return).

In addition to these differences, two important aspects of the visa procedure: the obligation to justify visa refusal and the right of appeal, are left under CCI for regulation in the Member States' national legislation. The actual practice in both cases differs significantly; however, the procedures

³ The Common Consular Instructions on visas for the diplomatic missions and consular posts (CCI) lay down detailed rules for procedures and conditions for the issuance of common short-stay visas (up to 3 months) valid in the territory of all Contracting States. The list of third countries whose nationals must be in possession of visas when crossing the external borders ('black list') is set out in Council Regulation 539/2001/EC.

followed by most of the Schengen Member States do not ensure the applicant's right to information about the reasons of visa refusal or the right of appeal against a refusal.

Varying complexity of visa procedures applied by the Schengen Member States

As the visa procedures applied by the Schengen Member States differ, the applicants' perceptions of the complexity of the process also vary. The survey indicates that the Consulates of some Schengen countries (like Finland) are considered to be friendly and believed to provide applicants with reliable information about visa requirements and to treat applicants respectfully; on the other hand, Consulates of other countries, such as France, apply complex procedures, largely incomprehensible to applicants.

Inconsistent visa refusal policy

Like the entire procedure, the visa refusal policy also varies considerably. Visa refusals to nationals of the monitored countries (Belarus, Moldova, Ukraine, Russia) ranged from 2% in the case of Russian applicants to 28% for Belarusian applicants (14% for Ukrainians, 10% for Moldovans) on average for all the Schengen countries. The large difference in the percentage of visa refusals seems to have no rational grounds.

Attitude of Consulate staff and communication with applicants

The survey suggests that applicants' perceptions of the complexity of the visa procedure is largely dependent on the communication of reliable, understandable information about the visa requirements. The attitude of Consulate staff was also very important to applicants. Treatment received mattered more to the perception of the procedure than the waiting time for a visa and even a visa refusal.

Part II

Recommendations

The recommendations outlined below refer to the currently applicable Schengen *acquis* which lays down the visa issuance procedures – Common Consular Instructions (CCI) and the Commission’s proposal to amend the *acquis* as summarised in the Common Code on Visas (CCV)⁴ based on earlier proposals related to the introduction of biometric visas⁵.

The Commission proposal set out in the draft CCV Regulation introduces important changes in the existing procedures and is a useful review document, bringing together all existing visa provisions. It also introduces a clear definition of the previously ambiguous legal status of CCI. However, the changes should be more far-reaching, extending beyond legal provisions and into the visa practice, which our monitoring exercise showed to be crucial to applicants yet pursued differently by the Member States.

Our recommendations are presented in the following order:

1. Information: Better communication
2. Shorter list of required documents
3. One visit to the Consulate
4. Waiver of the applicant interview procedure

⁴ Draft proposal for a Regulation of the EP and of the Council establishing a Community Code on Visas; COM(2006)403.

⁵ Including e.g. COM(2006)269 Proposal for a Regulation of the EP and the Council amending the CCI on visas for diplomatic and consular posts in relation to the introduction of biometrics including provisions on the organisation of the reception and processing of visa applications, Brussels, 31 May, 2006, and Council Decision 2006/440/EC.

5. Simplified reapplication procedure
6. Wider use of multiple-entry visas with a five-year period of validity
7. Obligation to justify visa refusal
8. Right of appeal
9. Visa fee reduction
10. Elimination of unofficial measures to control returns
11. Common Application Centres (CAC)
12. Better organisation of the phase preceding the submission of an application
13. Importance of the attitude displayed by the staff
14. Closer local consular co-operation

1. Information: Better communication

Existing legislation and practice: Opinions about Consulates expressed in our survey suggest that communication is one of the weakest points of the visa procedure. CCI leaves the communication method of visa requirements to the Member States. CCI recommends that the States harmonise at a local level ‘information for the general public on the conditions governing Schengen visa applications’ (part VIII.1). Yet the recommendation remains a dead letter. The scope of information and the modes of communication vary. The most typical form of communication is a board situated outside the Consulate building. It is less frequent for complete information (and application forms) to be available on the internet⁶, by telephone, or in free-of-charge leaflets. Applicants lack necessary information and are often turned back due to incorrectly completed forms or incomplete documentation.

Commission proposal: The proposal introduces an important change as it lists the information to be communicated to the general public (such as criteria, conditions and procedures for applying for a visa, means of obtaining the appointment, place to submit the application – Article 41) and provides for a common information sheet on Schengen visas to be established within local consular cooperation (Article 42.2). The proposal contains no provisions on modes of communication.

⁶ Visa Policies of European Union Member States, Monitoring Report, Stefan Batory Foundation 2006, p.13, available at www.openborders.pl.

Recommendations:**Grounds:**

Applicants want to receive reliable information; better communication with applicants is a precondition of improving the entire procedure. Our monitoring exercise suggests that applicants would want to use Consulate websites but those were unavailable. It is necessary to develop a blueprint website containing all Schengen visa information to be modified depending on the local conditions. The website should include a visa application form that could be completed and registered online. A good practice requires a separate information desk and designated local information officers (few Consulates have them while the survey shows that applicants want to receive oral information almost as much as on the internet).

Proposal:

Article 41 should be expanded to provide for obligatory modes of communication of information on Schengen visa requirements (website including visa application forms, information hotline, Consulate information desk).

2. Shorter list of required documents

Existing legislation: CCI provides a broad description of various documents that may be required by the visa issuing authority. Documents regarding the purpose of the journey may include a letter of invitation or a summons; documents regarding means of transport and return include a return ticket and currency for petrol and car insurance; documents regarding accommodation include a hotel reservation and a certificate of the national authorities stating that the applicant shall stay at a person's home or in an institution; documents regarding means of subsistence include cash, travellers cheques, credit cards. The level of means of subsistence shall be proportionate to the length of visit and the purpose of the visit, and also the cost of living in the State to be visited. Other required documents regarding the applicant may include proof of place of residence and proof of ties with the country of residence or proof of the social and professional status of the applicant.

Commission proposal: *CCV basically copies the CCI list and puts it in Annex IV. CCV provides for some facilitation as it contains a standard form of a letter of invitation (Annex V); however, of some concern is the obligation to attach documents regarding the inviting person (proof of residence, proof of income) which entails that the right to travel to a Schengen State will be dependent on the status of a third person. Business travel is facilitated thanks to an extended list of documents that can justify the purpose of the journey.*

The list in Annex IV to CCV includes vague categories of documents, for instance, section B: proof of ‘professional status’ and ‘family ties’ with the country of residence.

Recommendations:

Grounds:

Due to the imprecise lists of required documents, Schengen States’ Consulates apply a different practice; applicants are turned back to produce additional documents several times (up to 9 times in some cases noted in the survey). And many of the documents are required unnecessarily:

- return ticket: purchase of a ticket without a guarantee of a visa implies a significant financial loss to the applicant;
- hotel reservation: it is not a proof, a hotel reservation can easily be made and cancelled (this also encourages the well-known practice of trading in counterfeit confirmations of reservation, trip, etc.);
- a certificate of enrolment for students: this frequently involves costs that cannot be recovered in the case of visa refusal;
- proof of integration into the country of residence: family ties and professional status: these are vague notions subject to discretionary interpretation by Consulates;

Proposal:

The list of required documents to be attached to the application form should be clearly defined for all the Schengen Member States, including only the following (Annex IV):

- for **business trips**: one of the documents listed in Annex IV part A(1) to CCV;

- for journeys undertaken for the purpose of **tourism**: sufficient means of subsistence for all days of the visit (documented by a bank account statement, cash, cheques, credit cards);
- for journeys undertaken for **private reasons**: letter of invitation from family or friends, or proof of having relatives residing in a Schengen State;
- for journeys undertaken for the purpose of **study**: letter from the hosting school or university confirming the intention of candidate admission if one gets a visa;
- for journeys undertaken for political, scientific, cultural, sports or religious **events**: one of the documents listed in Annex IV part A(4) to CCV;
- medical insurance: may only be required at the time of collecting a visa.

Any other documents may only be required in exceptional circumstances. It should be possible to send any additional documents **by post, fax, or e-mail**, to be authenticated when visiting the Consulate to get the visa.

The proposed simplification of the list of required documents is also supported by the planned establishment of Common Application Centres. Regardless of the State to be visited, CACs should use a consistent list of required documents; otherwise, their operation will be incoherent.

3. One visit to the Consulate

Existing legislation and practice: Not regulated.

Commission proposal: Not regulated.

Recommendations:

The modern information technology enables retail customers to operate bank accounts and make banking transactions online; also documents signed electronically are widely recognised. In view of the opportunities afforded by today's information technology, it is reasonable to launch online visa application procedures. Both applicants and Consulates would benefit from the possibility of completing visa application forms online and providing relevant documents electronically. The online procedure will be applicable in particular where the applicant's biometric data are

already available in the Visa Information System (VIS). Then the applicant would only be required to visit the Consulate once, to produce original documents, previously sent electronically, for purposes of authentication, and to collect the visa.

Proposal:

The procedures should be restricted to a single visit to the Consulate. If the application form was sent to the Consulate electronically, the visa should be collected in person. If, however, the documents were delivered in person, the applicant may request to have them sent by courier (in that case, the cost would be covered by the applicant).

4. Waiver of the applicant interview procedure

Existing legislation: According to CCI, the general rule of visa procedures is to interview the applicant (the Consulate may waive the interview procedure in several cases: where the applicant is well-known, or where the distance from the Consulate is too great, provided that there is no doubt as to the good faith of the applicant, and where in the case of large groups, a reputable and trustworthy body is able to vouch for the good faith of those persons concerned).

Commission proposal: As a positive change, the new CCV proposal provides for more discretion of the Consulate in waiving the interview. The proposal makes the interview procedure an exception to be used if there is any doubt as to the purpose of the applicant's stay that the documents cannot clarify (Article 18).

Recommendations:

Where an interview is necessary, it should be made by telephone (the provisions of Article 18.2 should be expanded).

5. Simplified reapplication procedure

Existing legislation: Not regulated.

Commission proposal: Under the new Commission proposal (COM(2006)269) amending the CCI in relation to the introduction of biometrics, individuals applying for another visa within a period of 4 years will not be required again to provide primary data (fingerprints, facial image).

Recommendations:

In the case of individuals without a criminal record who did not overstay their previous visa, CCV should provide for simplified written procedures where no additional documents are required and where for such a person multiple-entry visa is automatically granted.

Easier visa procedures (containing a simplified list of required documents and an easier way of receiving multiple-entry visas) are already provided for in the proposed EU–Russia and EU-Ukraine visa facilitation agreements but unnecessarily limited there to certain categories of persons. Facilitation should also be open to all people with a ‘positive visa record’ who used their previous visas legally and did not overstay them.

6. Wider use of multiple-entry visas with a five-year period of validity

Existing legislation: *Under CCI, visas with a longer period of validity for a maximum of five years can be issued to persons ‘offering the necessary guarantees’ and persons ‘whom the Contracting Parties have shown a particular interest in’.*

Commission proposal: *Article 20 of the Commission proposal provides for the option of issuing five-year visas and lists the categories of applicants for whom five-year visas are particularly relevant.*

Recommendations:

Where there is no doubt about the good faith of the applicant, a five-year visa should be issued automatically. It is now a rather rare practice. This should in particular apply to those professional groups whose contacts with the EU Member States are frequent and based on business concerns: public officials, business people, journalists, scientists, international drivers, activists of non-governmental organisations co-operating with EU NGOs, and individuals whose relatives reside in EU Member States.

Multiple-entry visas with a longer period of validity would help to reduce the workload of Consulates. Article 20 of the proposal should more clearly provide for the right to be issued a five-year visa for all those individuals whose professional or family relations require frequent visits to EU Member States.

7. Obligation to justify visa refusal

Existing legislation: CCI provide for a standard procedure to inform the interested party about the grounds for visa refusal, but the actual obligation to provide the information is left for regulation in national legislation. As CCI do not provide for the obligation as such, most applicants are never told the reasons for visa refusal.

Commission proposal: The Commission CCV proposal makes a positive change. The standard form stating the reasons for visa refusal shall be used obligatorily in the visa procedure (Article 23.2 and Annex IX).

Recommendations:

Information about the reasons for the decision is crucial to the applicants: on the one hand, it helps them to draft a new, amended visa application (or to file an appeal, where possible); on the other hand, it strengthens the image of the Consulate as an institution applying transparent visa procedures. Indirectly, information about the reasons for visa refusal mitigates the arbitrariness of decisions as officials are obliged to prove the logical reasons for visa refusal.

Proposal:

In view of the proposed short standard visa refusal form, Consulates should additionally invite applicants wishing to find out the details of visa refusal to visit, and communicate the hours of such visits. It is a good practice to allow for an hour a day when the consul would see interested applicants.

8. Right of appeal

Existing legislation: Like information about the reasons for visa refusal, the right to appeal against the decision is left for regulation in the national legislation of the Schengen Member States (CCI). Consequently, the actual right of appeal practice of the Schengen States varies.

Commission proposal: The proposal provides for the applicant's right to appeal; the actual appeal procedure is to be governed by the national law of the Member States (Article 23.3).

Recommendations:

The right to appeal is crucial to ensure a proper visa procedure; it confines potentially arbitrary decisions of the consular officer involved and any related abuse of power. The right of appeal against a decision is in line with the European standards of administrative procedures. It is particularly important in the area of internal security where decisions are made in a single stage procedure by officials and may be particularly susceptible to irregularities and abuse.

9. Visa fee reduction

Existing legislation: EUR 35 for a Schengen visa.

Commission proposal: Visa fee to be raised to EUR 60 (Council Decision 2006/440/EC, 1 June 2006). The fee is subject to change under bilateral agreements between the EU and a third country where a mandate to negotiate the agreement is given before 1 January 2007.

Recommendations:

The cost of introduction of new biometric measures aimed to improve the internal security of the EU Member States should not be borne by third country nationals, especially the nationals of the neighbouring countries. The introduction of a EUR 60 fee for all those subject to the visa obligation will adversely affect thousands of travellers. It will also hurt the image of the European Union since its actions will be perceived as contradictory to the frequently voiced declarations of friendly relations with the neighbouring countries.

Proposal:

When the fee is raised to EUR 60 and where a country has not signed a bilateral agreement (agreements providing for a fee of EUR 35 are now being negotiated between the EU and Russia and between the EU and Ukraine), the fee should be charged at the time of collecting a visa, i.e., only in the case of granting a visa. Article 16 of CCV should be amended accordingly.

A higher visa fee will be particularly onerous to those countries subject to the visa obligation where the EU policy should be mainly focused on relations with the society rather than the authorities. This is the case of Belarus: despite declared support for civil society, a raised visa fee will augment the isolation of Belarusian nationals. In view of the situation in Belarus, CCV should provide for a lower visa fee in cases other than existing bilateral agreements (mandated by the end of 2006). Given the importance of this issue, the Council should be in a position to pass decisions providing for reduced fees in individual cases.

10. Elimination of unofficial measures to control returns

Existing legislation: *Not regulated. However, our survey found repeated cases where visas were issued on the condition of reporting back to the Consulate upon return. This gives the applicants the impression of being treated like second-class citizens, and what is worse, it is strongly evocative of the Soviet times when nationals returning to their country of residence were required to report to the authorities and return the passport. Another means of checking the return used by EU Consulates in Moldova is to require a cash deposit repaid only upon return. In both cases, applicants need to visit the Consulate in order to obtain a visa (usually more than one visit) and then once again upon return in order to retrieve the cash deposit or to report back (distances to the nearest Consulate in the countries we monitored exceed 300 km).*

Commission proposal: *Not regulated.*

Recommendations:

CCV should identify the practice of requiring the applicant to report back to the Consulate upon return (to report and to retrieve the cash deposit) as illegal.

11. Common Application Centres (CAC)

Existing legislation: *CCI provides for the procedure of bilateral agreements on common representation of the Schengen Member States. Nevertheless, the dis-*

tance to the nearest Consulate travelled by nationals of the four Eastern European countries covered by our survey was 300 km on average (equivalent to a journey of 8 hours due to the poor railway and road network).

Commission proposal: *The establishment of Common Application Centres is a step in the right direction, but remains a vague notion.*

Recommendations:

The current system breeds paradoxical situations: for instance, Moldovans applying for visas of most Schengen Member States have to travel to Bucharest (12 hours from Chisinau) to file an application, to collect the visa, and again to submit additional documents, and in addition will soon be required to hold a Romanian visa.

We support the prompt establishment of CACs as obligatory where the distance to the nearest Consulate is more than 100 km. The CAC visa process should be identical for all the Member States involved, including the same information and registration procedure and the same list of required documents. Otherwise, the CACs procedures will prove very onerous to the applicants.

12. Better organisation of the phase preceding the submission of an application

Existing legislation: *Not regulated*

Commission proposal: *It provides for collection of biometric data and applications by external service providers (Article 37) and for a maximum two-week period of waiting for an appointment for the submission of an application (Article 10).*

Recommendations:

A negative perception of the visa procedures was often noted with respect to the steps preceding the substantive procedure itself (when acquiring the application, queuing up to make an appointment and submitting the documents required). Applicants queue up based on unofficial lists; positions on the lists are traded; while Consulates ignore the existence of the queues and lists, they are impossible for the applicants to by-pass. None of the Consulates covered by our survey (26 Consulates of eight EU Member

States in four Eastern European countries: Belarus, Ukraine, Moldova, Russia) provided the applicants waiting outside the buildings with seats or roofs shielding from weather conditions.

CCV should clearly provide for the responsibility of Consulates for those stages of the visa procedure which are not ‘substantive’ and which take part mostly outside the Consulate building (queues). Procedures should be put in place to enable the applicants to lodge documents at their convenience without having to stand in line (appointment online, by phone or via electronic facilities installed in front of the Consulate). Online applications should be available, and it should be possible to send documents by courier (see above).

13. Importance of the attitude displayed by the Consulate staff

Existing legislation: Not regulated.

Commission proposal: *The proposal makes an important change compared to CCI. Article 36 provides that diplomatic missions and consular posts shall ensure that applicants are received courteously, with full respect of human dignity, and shall not discriminate against applicants on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.*

Recommendations:

Grounds:

This seemingly minor factor – professional and polite treatment of applicants – largely affects the perception of the entire visa procedure. Consulate employees should not only know legal provisions but also represent a high standard of personal conduct and adequate interpersonal skills. Training sessions should be offered to sensitise Consulate staff to the importance of proper treatment of visa applicants and the need to show a professional and polite attitude towards customers. This also applies to local personnel providing service to individuals at counters, and to security personnel.

Proposal:

Article 36 should provide for obligatory training of staff in customer service, as well as the right to complain to the consul about inappropriate staff conduct.

14. Closer local consular co-operation

Existing legislation: *Under CCI (part VIII), co-operation at a local level shall be aimed at determining common criteria for examining files, exchanging information on the use of false documents, and on refusing visas where applications are clearly ill-founded or fraudulent, as well as the role of intermediaries (irregularities, granting and withdrawing accreditation). Co-operation at a local level should also enable the harmonisation of the list of additional documents required by the diplomatic mission or consular post in the procedures, and the joint development of information for the general public on the conditions governing Schengen visa applications.*

The actual local co-operation between Consulates depends on the local situation and varies in terms of scope or frequency. We know from observation that the co-operation takes place through e-mails sent to other Consulates (Schengen Member States Consulates, and sometimes Consulates of non-Schengen countries), regular meetings of representatives of Consulates (both Schengen and non-Schengen States), and special meetings of representatives of Schengen States' Consulates organised by the Presidency. In some cases, the co-operation is less formal and regular.

Commission proposal: *Article 42 clearly indicates the areas to be harmonised at a local level, but the need for harmonisation is to be assessed jointly by the Consulates in a given third country.*

Recommendations:

Observations at Schengen Member States' Consulates suggest that the existing attempts to harmonise some parts of the visa process at a local level (i.e. lists of required documents and shared information) come across serious difficulties. It is particularly important to change this and to introduce obligatory harmonisation in the context of the forthcoming enlargement of the Schengen area and the risk of Consulate shopping.

Protection of personal data in the visa procedure

Existing legislation: *It is of some concern that CCI do not provide for specific means of protecting information obtained from applicants in the course of visa procedures or for the authority of independent institutions to supervise this protection. Once an application is filed, the interested party is not entitled to actively participate in the procedures or to have access to the files. The processing of personal data obtained in the visa procedure is not defined or restricted to the use of the data for the necessary purpose. According to our information, data are exchanged between Consulates under an informal co-operation procedure.*

Commission proposal: *The proposal amending CCI in relation to the introduction of biometric data COM(2006)269 and CCV provide for the collection and protection of primary data in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and the UN Convention on the Rights of the Child, but there is no provision extending the safeguards to personal data obtained from other supporting documents.*

Recommendations:

Information obtained from applicants shall be protected and used in accordance with the safeguards enshrined in the European Charter of Fundamental Rights (Article 8)⁷.

⁷ Charter of Fundamental Rights of the EU (Nice, December 2000), Article 8: Protection of personal data, 2000/C 364/01

Part III

Schengen enlargement prospects

The existing visa regime of Poland, Hungary, and Lithuania applicable to the nationals of their eastern neighbours is based on the rule of easy access to visas granted free of charge or at a low fee. The goal of the visa facilitation is not only to support further active trans-border exchange and co-operation but also to send the political message that EU enlargement is not disadvantageous to the eastern neighbours and will not create new divides.

Considerations of the implications of Schengen membership should take account of the passenger traffic volume from Ukraine to Poland and Hungary; for instance, Polish consular posts in Eastern Europe issued more than a million visas to nationals of Belarus, Russia and Ukraine in 2004 (including more than 500 thousand to Ukrainian nationals); Hungary issued over 250 thousand visas to Ukrainian nationals in 2004; the number of visas issued to Ukrainian nationals by Consulates of all Schengen Member States in 2004 was only a third of the number issued by Poland and Hungary combined. The passenger traffic volume from the neighbouring countries into Poland and Hungary (as well as Slovakia and Lithuania) suggests that the implications of Schengen membership and the introduction of Schengen visa fees and a more onerous visa procedure will be dramatic. Poland's liberal visa policy towards its eastern neighbours seems untenable in the context of Schengen membership. Possible solutions include the reduction of the Schengen visa

fee below EUR 35, the issuance of long-term visas, the delegation of some functions to external intermediaries, and local traffic facilitation.

Under the **visa facilitation agreements** (between the EU and Russia, and between the EU and Ukraine), the visa fee would be kept at EUR 35 (in other cases raised to EUR 60). Given the importance of this issue, the Council should be in a position to pass decisions providing for reduced fees in individual cases (below EUR 35), especially in the case of neighbourly relations.

Long-term visas (for stays exceeding 3 months) are not subject to harmonisation and fall under the remit of the Schengen Member States. Their territorial validity is restricted to the issuing Member State (and other Schengen States in transit). The visa holder may easily cross the internal EU border but the risk of sanction in the case of detection (prohibition to enter the EU for several years) should be a sufficient deterrent. Issuance of long-term visas could be an important mechanism of the policy towards EU eastern neighbours. In order to give the nationals of the neighbouring countries access to long-term visas, the visa policy of such countries as Poland, Hungary, Slovakia should be integrated with the migration policy and facilitation of legal employment of foreigners. At present, a large percentage of foreigners entering Poland with a tourist visa take up illegal jobs (especially in agriculture, house maintenance, construction). After accession to the Schengen agreement, the current liberal visa procedures will probably be restricted with respect to short-term visas. This may hurt many sectors of the economy as the current number of visitors will decline. In addition, many individuals who are now temporary migrants will decide to risk an illegal stay in the new Member States. It is necessary to **open access to legal employment of foreigners** if the Schengen membership is not to affect nationals of Eastern European countries travelling to Poland and the other new EU Member States.

Another option is to **delegate the functions of collection of visa applications** to external contractors. This would help Consulates which are now coping with an excessive workload: over the past months, the time-lag between registration and submission of an application in Polish Consulates

in Ukraine and Belarus has increased to more than a month. The situation will deteriorate further unless these functions are delegated to external contractors.

It is in the interest of the enlarged Community to ensure that its borders with the neighbouring countries should not raise barriers to trade, social and cultural exchange, and regional co-operation. CCV should be extended to include the criteria and conditions of visa issuance to the population of the border area for the purpose of **local border traffic**. The Commission and the Council have identified the need to develop legislation facilitating local border traffic, as set out in Commission proposal COM(2005)56⁸. The proposal provides for 'L' visas ('L' for 'local'): multiple-entry visas for residents of border areas subject to the visa obligation, issued for at least one year and for maximum five years, entitling the holder to stay in the border area of the issuing Member State for 7 consecutive days maximum and without exceeding, in any case, three months within any half-year period; this proposal should be added to CCV. The size of the border area covered by the facilitations should depend on the local situation (density of population, distribution of inhabitants in the border area) rather than be limited to 30 km from the frontier as laid down in the proposal; there should be special fees charged for 'L' visas.

⁸ Proposal for a Regulation of the European Parliament and of the Council laying down rules on local border traffic at the external land borders of the Member States and amending the Schengen Convention and the Common Consular Instructions, Brussels, 23.02.2005.

General principles

It should be a long-term goal of the EU policy to **lift the visa obligation** for nationals of the neighbouring countries. This goal must not remain limited to vague declarations but should rather be translated into a road map: a list of specific conditions and criteria to be met as a guarantee of visa-free travel regime. The criteria could include a positive assessment of the application of the readmission agreement, a low percentage of nationals overstaying their visas, a low number of individuals deported for illegal employment. If possible, a timetable should be set out for the road map.

Revision of the visa refusal policy. Our monitoring exercise indicated large differences in the percentage of refusals to the nationals of the countries covered by the survey (Belarus, Moldova, Russia, Ukraine). Those most frequently refused Schengen visas were Belarusian nationals. The declarations of facilitated interpersonal contacts and opening Europe to the Belarusian society should be substantiated by the practice applied by Consulates. The current visa policy towards Belarusian nationals only corroborates the Lukashenka regime's propaganda claiming that the EU is turning its back to the Belarusian people.

Project Partners

The Visa Monitoring Project is a result of cooperation between the Stefan Batory Foundation, Collegium Civitas, the Helsinki Foundation for Human Rights, and four non-governmental organisations from Eastern Europe: the Belarusian Centre for Social Innovation, the Moldovan Institute for Public Policy, the Moscow Bureau for Human Rights, and the Ukrainian Centre for Peace, Conversion and Foreign Policy.

Stefan Batory Foundation, Warsaw

The aim of the Stefan Batory Foundation is to support the development of a democratic, open society both in Poland and in other countries of the region. The Foundation's priorities include the reinforcement of the role and a proactive approach to civil society, the propagation of civil liberties and the rule of law as well as the development of international collaboration and solidarity. The Foundation acts as a coordinator of the 'Friendly EU Border' project and conducts, as part of the project, a programme of studies on the visa policies of EU Member States in Eastern Europe.

www.batory.org.pl

www.openborders.pl

Project coordinator: Anita Szymborska

Collegium Civitas, Warsaw

A private university in Warsaw. It is an international school operating under the auspices of five social science institutes of the Polish Academy of Sciences. The Research Centre for Economic Sociology of Collegium Civitas supervised sociological studies conducted as part of the survey over the EU visa system applied towards Eastern European citizens.

www.collegium.edu.pl

Project coordinator: Leszek Chajewski

The Helsinki Foundation for Human Rights, Warsaw

The Foundation promotes the harmonisation of Polish law with international standards. It provides education in the scope of human rights, the rule of law and constitutionalism and is a facilitator of legal counselling services addressed, among others, to foreigners staying in Poland. Within the framework of the examination of the visa system of the EU for citizens from Eastern European countries, the Foundation provided consultations and training in law for partners from Belarus, Moldova, Russia and the Ukraine.

www.hfhrpol.waw.pl

Project coordinators: Paweł Hermeliński, Bartłomiej Tokarz

Institute for Public Policy, Chisinau

The Institute for Public Policy is an independent non-profit organisation supporting the development of democratic society, the rule of law and free-market economy. On account of its research and publications, the Institute provides an in-depth analysis of Moldovan public life to political, business and academic circles as well as to the media. The Institute conducts research on the new EU borders, and – since 2005 – has been collaborating with the Stefan Batory Foundation on the ‘Friendly EU Border’ project.

www.ipp.md

Project coordinator: Julian Rusu

Moscow Bureau for Human Rights, Moscow

The Bureau monitors on an ongoing basis all cases of human rights abuse in Russia focusing in particular on xenophobia, racial discrimination and anti-Semitism. It ensures publicity to any instances of human rights abuse, publishes an Annual Human Rights Report addressed to governmental institutions and the judiciary in Russia. The Bureau provides legal counselling services on the phone, organises press conferences, seminars and round table debates on the subject of tolerance.

www.antirasizm.ru

Project coordinator: Maria Krokchina

Centre for Peace, Conversion and Foreign Policy of Ukraine, Kyiv

The major objective of this organisation is participation in research projects on the current problems of security, the political and civil growth of the Ukraine and the process of its integration with the European and global community of nations. The research results – specifically concerning civil society, human and minority rights, migration, socio-economic living conditions, potential conflicts in the Ukraine, the ruling elite, civil control over military forces, the Ukraine's international position and its integration with European structures – are being presented to the Ukrainian authorities and to political leaders in the Ukraine and abroad.

www.cpcfpu.org.ua

Project coordinators: Iryna Sushko, Oleksandr Sushko

International Renaissance Foundation, Kyiv

IRF is a part of the International Soros network and the Ukraine's largest charity. The International Renaissance Foundation provides financial and operational assistance to projects and programs which foster the development of civil society, promote rule of law and an independent mass media. Funds are also allocated for diversification of information resources for the third sector, democratization of education and public health, advancement of social capital and academic publications, as well as ensuring the protection of the rights of national minorities and their integration into Ukrainian society. IRF is providing financial support to the EU Friendly Border Project.

www.irf.kiev.ua

Centre for Social Innovation, Minsk

The main objectives of the Centre, which was founded in 1996, include: support for the establishment of an effective mechanism of social, civil and economic security, creating adequate conditions for the intellectual and creative development of Belarusian citizens as well as evaluation of the progress of the implementation of international projects in Belarus. The Centre pursues its mission through social and educational programmes as well as promotion of the development of non-governmental organisations and international liaisons.

Friendly EU Border Programme

The Programme is aimed at promoting openness on the Eastern EU border. This is to be achieved through, *inter alia*, promoting the facilitation of visa procedures for Eastern Europeans wishing to travel to Poland or other EU Member States, and raising the standards applied to those crossing the Eastern EU border.

The Programme was launched in 2002 by the Batory Foundation. It has been implemented in cooperation with Collegium Civitas, the Helsinki Human Rights Foundation, and other domestic and foreign NGOs and research institutions, including organisations from Belarus, Moldova, Russia, and the Ukraine.

For more information on the Programme please check our website: www.openborders.pl

Reports and papers published under the Friendly EU Border Programme

Visa Policies of the European Union Member States – Monitoring Report, 2006. The Report is based on the extensive survey of those applying for visas in the Consulates of certain EU Member States in Belarus, Moldova, Russia, and the Ukraine. The Report presents a comparative review of visa policies followed by certain Schengen States as well as non-Schengen States that are soon to join the group of the former (Latvia, the Czech Republic and Poland).

Monitoring of the Polish Visa Policy – Report, 2004. The Report presents findings from the survey that was conducted following the introduction of the visa regime for nationals of Belarus, Russia, and the Ukraine. The survey covered 11 Polish Consulates operating in these countries. It provides a comprehensive assessment of the visa procedures involved.

Monitoring of the Polish Visa Policy – Policy Paper, 2004. The Paper presents findings from the survey of the procedures followed by Polish Consulates in Belarus, Russia, and the Ukraine. Furthermore, it presents the recommendations concerning the changes needed.

Monitoring of the Eastern Polish Borders – Report, 2003. The report presents the situation on the Eastern Polish border, as seen by those crossing it from the East. Furthermore, it presents recommendations for the Polish Border Guard and Customs Service.

All Reports are available at the Programme website:
www.openborders.pl