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ANNEX

ANNEX

to the

Commission Implementing Decision

amending Commission Decision C(2010) 1620 final as regards the replacement of the Handbook for the processing of visa applications and the modification of issued visas (Visa Code Handbook I)

Annex

‘ANNEX

HANDBOOK FOR THE PROCESSING OF VISA APPLICATIONS AND THE MODIFICATION OF ISSUED VISAS ***(Visa Code Handbook I)***

FOREWORD

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

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

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

Fundamental rights enshrined in the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union must be guaranteed to any person applying for a visa. The processing of visa applications should be conducted in a professional and respectful manner and fully comply with the prohibition of inhuman and degrading treatments and the prohibition of discrimination enshrined, respectively, in Articles 3 and 14 of the European Convention on Human Rights and in Articles 4, 20 and 21 of the Charter of Fundamental Rights of the European Union. The human dignity of applicants, the protection of their personal data as well as the right to an effective (judicial) remedy as provided for in Articles 1, 8 and 47 of the Charter, respectively must also be respected throughout the visa procedure. In particular, consular staff must, in the performance of their duties, not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Any measures taken in the performance of their duties must be proportionate to the objectives pursued by such measures.

Consular staff and Member States' central authorities should seek to strike a balance between the need, on the one hand, always to be vigilant in order to detect persons posing a risk to public policy and internal security as well as potential illegal immigrants, and the need, on the other hand, to ensure the smooth handling of visa applications submitted by persons who fulfil the entry conditions. It is impossible in a Handbook to set up operational instructions providing clear guidance in each and every individual case that might occur. In such cases where no clear guidance is given, consular staff should process visa applications in full compliance with the spirit of the common visa policy. Further training material based on this Handbook is being developed as part of an EU-funded project. This material will be made

[1] Regulation (EC) No 810/2009 of 13.7.2009 of the European Parliament and of the Council establishing a Community Code on Visas (Visa Code), OJ L 243, 15.9.2009, page 1, ELI: http://data.europa.eu/eli/reg/2009/810/2020-02-02).

available to all Member States and will enable consular staff to be trained in applying the provisions of the Visa Code.

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1.1 EU Member States

Austria

Belgium

Bulgaria*

Croatia

Czechia

Denmark

Estonia

Finland

France

Germany

Greece

Hungary

Italy

Latvia

Lithuania

Luxembourg

Malta

The Netherlands

Poland

Portugal

Romania*

Slovakia

Slovenia

Spain

Sweden

* Checks on land borders have not been lifted yet. However, the Schengen *acquis* regarding visa is fully implemented by Bulgaria and Romania since 31 March 2024.

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

Ireland does not take part in the common visa policy.

1.2 Associated countries

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

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

Cyprus has not yet implemented the Schengen *acquis* in full. This means that the Visa Code is binding upon Cyprus, but until the Schengen *acquis* is fully implemented, the country continues to issue national short-stay visas that are valid only for its own territory. Furthermore, residence documents issued by Cyprus to third-country nationals do not yet grant visa-free travel in the Schengen area (see point 3.1.1). However, Cyprus fully applies Regulation (EU) 2018/1806 listing the third countries whose nationals must be in possession of a visa when crossing the external borders and those whose nationals are exempt from that requirement.

2. TERMINOLOGY

For the purpose of the Visa Code and this Handbook, the term 'Member State' refers to those EU Member States applying the Schengen *acquis* in full and the associated countries. 'Territory of the Member States' refers to the territory of these 'Member States' to which the visa policy applies (see points 1.1 and 1.2).

For the purpose of this Handbook and depending on the context, the term 'consulate' and 'consular staff' also covers the situation where, in derogation from Article 4(1) of the Visa Code, a Member State's central and visa authorities are responsible for examining and deciding on visa applications.

3. VISA REQUIREMENTS

UNIFORM VISAS

3.1 Which nationalities are subject to a visa requirement?

Legal basis: Regulation (EU) 2018/1806

The list of third countries whose nationals must hold a visa for entering into the territory of the Member States for stays not exceeding 90 days in any 180-day period is set out in Regulation (EU) 2018/1806 of the European Parliament and of the Council[3] (see Annex 5)[4].

The short stay visa rules are based on nationality, which is the basic criteria for determining whether a person is subject to visa requirements. Except for the specific cases of holders of

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2 The Agreement on the European Economic Area.

3 Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 303, 28.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1806/oj).

4 All references to annexes, if not specifically indicated otherwise, concern the annexes to this Handbook, which are distributed electronically and updated as necessary.

refugees or stateless person's passport, in most cases, neither the type of travel document that s/he holds nor the country that issued it determines whether the person is subject to the visa requirement. If the holder's nationality is not indicated in the travel document, it is for the Member States to assess whether the nationality may be established by other documents. If the applicant's nationality cannot be established, the travel document determines whether s/he is subject to the visa requirement.

Example: *a Colombian national holding a refugees passport issued by the United States and residing in the US wishes to travel to Sweden. His nationality is indicated in the travel document. Sweden does not waive the visa requirement for holders of this document but since Colombian nationals are 'visa free', the person should be allowed to travel without a visa to Sweden.*

Example: *Foreigners who are not born natural citizens of Uruguay hold a passport where it is indicated that they are "legal citizens" and the 'previous' nationality is indicated. Uruguayan nationals are visa-free, but the short stay visa requirement will depend on the holder's nationality. For example, a Cuban national holding such an Uruguayan travel document would be required to apply for a visa to travel to the territory of the Member States because Cuban nationals are visa-required.*

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

- Third-country nationals holding a residence permit issued by a Member State are not exempt as such from the visa requirement. However, a residence permit issued by a Member State applying the Schengen *acquis* in full is considered as being equivalent to a uniform visa, therefore allowing its holder to travel visa-free. Residence permits issued by Cyprus to third-country nationals do not exempt them from the visa requirement in the Schengen area, nor are residence permits issued by Ireland. See List of residence permits issued by Member States (Annex 2);
- holders of diplomatic (and, occasionally, service) passports who under the EU-level visa facilitation agreements or specific visa waiver agreements with certain third countries are exempt from the visa requirement;
- third-country nationals holding a 'local border traffic permit' when exercising their rights within the context of the local border traffic regime[5] (Annex 3);
- school pupils who are nationals of third countries whose nationals are subject to visa requirements and who reside in an EU Member State and are travelling in the context of a school excursion as a member of a group of school pupils accompanied by a teacher from the school in question. See List of school pupils travelling in the framework of a school excursion within the European Union (Annex 4);

[5] OJ L 405, 30.12.2006 and OJ L 29, 3.2.2007.

– recognised refugees and stateless persons and other persons who do not hold the nationality of any country who reside in a Member State and are holders of a travel document issued by that Member State;

– certain categories of non-EU family members of EU and Swiss citizens are exempt from visa requirements (see Part III);

– beneficiaries of Part Two of the EU-UK Withdrawal Agreement[6] who hold a residence document issued under Article 18 of the Withdrawal Agreement or a frontier workers document issued under Article 26 of the Withdrawal Agreement[7].

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

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

– holders of diplomatic, service/official and special passports;

– civilian air and sea crew members in the performance of their duties;

– civilian sea crew members, when they go ashore, who hold a seafarer's identity document issued in accordance with International Labour Organisation Conventions No 108 of 13 May 1958 or No 185 of 16 June 2003 or the International Maritime Organisation Convention on Facilitation of International Maritime Traffic of 9 April 1965;

– crew and members of emergency or rescue missions in the event of a disaster or accident, and civilian sea crew members navigating in international inland waters;

– holders of travel documents issued by intergovernmental international organisations of which at least one Member State is member, or by entities recognised by the Member State concerned as subjects of international law, to officials of those organisations or entities;

– members of the armed forces travelling on NATO or Partnership for Peace business;

– holders of identification and movement orders provided for by the Agreement of 19 June 1951 between the parties to the NATO regarding the status of their forces;

– school pupils travelling in the context of a school excursion as a member of a group of school pupils accompanied by a teacher from the school in question;

– recognised refugees, who are nationals of a third country whose nationals are subject to visa requirements and who reside in a third country whose nationals are not subject to visa

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6 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community 2019/C 384 I/01, OJ C 384I , 12.11.2019, p. 1–177.

7 Beneficiaries of the Separation Agreement between the UK and the EEA EFTA countries (Iceland, Liechtenstein, Norway) and beneficiaries of the UK-Switzerland Agreement on Citizens' Rights who hold a residence document issued under one of these agreements are also exempt from the visa requirement, since such residence documents are issued by Schengen associated countries that apply the Schengen *acquis* in full.

requirements or who are stateless persons residing in and holding a travel document issued by a third country whose nationals are not subject to visa requirements;

– without prejudice to the requirements stemming from the European Agreement on the Abolition of Visas for Refugees signed at Strasbourg on 20 April 1959, recognised refugees and stateless persons and other persons who do not hold the nationality of any country, who reside in Ireland and are holders of a travel document issued by Ireland, which is recognised by the Member State concerned.

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

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

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

3.2 Which nationalities are exempt from the visa requirement?

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

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

In accordance with Regulation (EU) 2018/1806, Member States may individually decide to impose visa requirements on certain categories of nationals of third countries normally not subject to a visa requirement:

– holders of diplomatic, service/official and special passports;

– civilian air and sea crew members;

– flight crew and attendants on emergency or rescue flights and other helpers in the event of a disaster or accident;

– civilian sea crew including crew of ships navigating in international waters and on international inland waterways;

– holders of laissez-passer issued by some intergovernmental international organisations to their officials;

– persons wishing to carry out paid activities during a stay of less than 90 days.

When a visa is issued to these categories of persons travelling for these purposes, it shall be a uniform short stay visa issued under the Visa Code.

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

The exception to the exemption from the visa requirement in Article 6(3) of Regulation (EU) 2018/1806 (‘persons travelling for the purpose of carrying out a paid activity’) should be interpreted narrowly. In particular, it should not concern persons employed or exercising an independent activity in their country of residence who have to travel for professional

purposes. In that sense, and in accordance with the Visa Waiver Agreements concluded by the EU with certain third countries, this exception should not cover:

– business persons, i.e. persons travelling for business purposes (without being employed in the Member State of destination);

– sports persons and artists performing an activity on an ad hoc basis;

– journalists sent by the media of their country of residence; and

– intra-corporate trainees.

AIRPORT TRANSIT VISAS

Legal basis: Visa Code, Article 3

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

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

In certain circumstances, a Member State may unilaterally decide to require nationals from certain third countries to hold an airport transit visa when passing through the international transit areas of airports situated on its territory (Annex 7B).

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

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

(a) holders of a valid uniform visa, national long stay visa or residence permit issued by a Member State;

(b) holders of a valid visa issued by

– Cyprus or Ireland;

– Canada, Japan or the United States of America; or for

– one or more of the overseas countries and territories of the Kingdom of the Netherlands (Aruba, Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba);

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

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

The exemption of holders of valid visas issued by, Cyprus, Ireland, Canada, Japan, the United States of America or for the overseas countries and territories of the Netherlands, referred to in point (b), applies irrespective of whether the person concerned travels to the country that issued the visa or to another third country.

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

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

Example: *A Ghanaian national holding a valid UK visa is travelling from Accra (Ghana) to Edinburgh (UK) via Amsterdam (The Netherlands).*

This person needs to hold an airport transit visa when transiting through the international transit area of Amsterdam Schiphol Airport since holders of valid visas issued by the United Kingdom are not exempt from the airport transit visa requirement.

However, if a third-country national holding an expired visa issued by Cyprus, Ireland, Canada, Japan, the United States of America or for the overseas countries and territories of the Netherlands, referred to in point (b), returns from a third country other than the issuing country (or the country or territory for which the visa was valid), he or she is not exempted from the airport transit visa requirement:

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

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

(c) holders of a valid residence permit

– issued by Ireland;

– issued by Andorra, Canada, Japan, San Marino, the United States of America or the United Kingdom guaranteeing the holder's unconditional readmission (Annex 7C); or for

– one or more of the overseas countries and territories of the Kingdom of the Netherlands (Aruba, Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba);

Example*: A Pakistani national holding a valid Biometric Residence Permit issued by the United Kingdom guaranteeing him/her unconditional readmission is travelling from London to Dakar via Paris Charles de Gaulle Airport.*

This person does not need to hold a valid airport transit visa when transiting through the international transit area of Paris Charles de Gaulle Airport.

(d) family members of EU, EEA and Swiss citizens covered by Directive 2004/38/EC of the European Parliament and of the Council[8] or the EU-

[8] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77, ELI: http://data.europa.eu/eli/dir/2004/38/oj).

Switzerland Agreement on the Free Movement of Persons[9], irrespective of whether they are travelling alone, to accompany or join the EU, EEA or Swiss citizen, and family members of UK nationals who are beneficiaries of the EU-UK Withdrawal Agreement[10], to join the UK national (Part III of this Handbook). However, if the origin and destination of the trip are outside the EU, family members of EU citizens covered by Directive 2004/38/EC should be accompanied by the EU citizen.

Example: *A Nigerian national is travelling with his French spouse from Lagos (Nigeria) via Frankfurt (Germany) to Bogotá (Colombia).*

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

(e) holders of diplomatic passports;

(f) flight crew members who are nationals of a contracting party to the Chicago Convention on International Civil Aviation.

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

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

5. THE UNIFORM FORMAT FOR THE VISA STICKER

Uniform visas, visas with limited territorial validity, and airport transit visas issued by Member States are printed on the uniform format for the visa sticker as established by Council Regulation (EC) No 1683/95[11] laying down a uniform format for visas.

6. VISA FACILITATION AGREEMENTS

Visa facilitation agreements (VFAs) between the European Union and certain third countries provide measures to facilitate procedures for issuing visas to nationals of specific third countries (e.g. reduction of the visa fee, issuance of multiple-entry visas for specific

9 Agreement between the European Community and its Member States, of one part, and the Swiss Confederation, of the other, on the free movement of persons, AFMP (OJ L 114, 30.4.2002, p. 6).

10 The requirement to hold an airport transit visa is also waived for joining family members of UK nationals who are beneficiaries of the Separation Agreement between the UK and the EEA EFTA countries (Iceland, Liechtenstein, Norway) or of the UK-Switzerland Agreement on Citizens' Rights.

11 Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 164, 14.7.1995, p. 1, ELI: http://data.europa.eu/eli/reg/1995/1683/oj).

categories of applicants, shorter processing times) without altering the conditions for issuing visas (i.e. the visa applicant must still satisfy the entry conditions).

Thirteen VFAs are currently in force[12] but two of them have been suspended partially or in whole. VFAs concerning third countries that are no longer under the short stay visa requirement are essentially redundant, although they are still to be applied for nationals of these countries who exceptionally apply for a visa (for example, because they do not hold a biometric passport). In addition, the Member States that maintain the short stay visa requirement for nationals of those countries who intend to carry out paid activity during their stay shall continue to apply the agreements. The joint committees monitoring these VFAs have drawn up specific implementing guidelines for each agreement. The VFAs are binding on all EU Member States except Denmark and Ireland. The Schengen associated countries are not covered by the VFAs.

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

Third country	***Entry into force of EU agreement***	***Entry into force of bilateral agreement*** ***Denmark***	***Entry into force of bilateral agreement*** ***Norway***	***Entry into force of bilateral agreement*** ***Switzerland***	***Entry into force of bilateral agreement*** ***Iceland***	***Entry into force of bilateral agreement*** ***Liechten-stein***
Russian Federation	1.6.2007 (suspended since 9.9.2022[13])	1.10.2009 (suspended since 16.10.2022)	1.12.2008	1.2.2011 (suspended since 19.9.2022)	1.3.2010	1.4.2015 (suspended since 27.9.2022)
Ukraine[14]	1.1.2008	1.3.2009	1.9.2011	1.3.2019		
Ukraine[idem] **amended**	1.7.2013	1.1.2016				
North Macedonia[15]	1.1.2008		1.2.2009			

12 January 2024.

13 See Council Decision (EU) 2022/1500 of 9 September 2022 on the suspension in whole of the application of the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation **(**OJ L 234I , 9.9.2022, p. 1–3).

14 In accordance with Regulation (EU) 2018/1806, nationals of Ukraine holding biometric passports are exempt from the visa obligation (OJ L 303, 28.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1806/oj).

15 In accordance with Regulation (EU) 2018/1806, nationals of the former Yugoslav Republic of Macedonia holding biometric passports are exempt from the visa obligation (OJ L 303, 28.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1806/oj).

Serbia[16]	1.1.2008	1.5.2009	1.6.2010	1.7.2010		
Montenegro[17]	1.1.2008	1.8.2008	16.12.2009			
Bosnia and Herzegovina[18]	1.1.2008	1.4.2009	1.5.2009	1.7.2009		
Albania[19]	1.1.2008	1.12.2008	1.5.2009		1.1.2010	
Republic of Moldova[20]	1.1.2008	1.9.2011	1.12.2011	1.2.2011		
Republic of Moldova amended[idem]	1.7.2013					
Georgia[21]	1.3.2011		1.12.2015	1.1.2014		
Armenia	1.1.2014	1.12.2023		1.8.2016		
Azerbaijan	1.9.2014		1.6.2015	1.4.2017		
Cape Verde	1.12.2014					
Cape Verde amended	1.07.2022					
Belarus[22]	1.07.2020					

16 In accordance with Regulation (EU) 2018/1806, nationals of Serbia holding biometric passports (excluding holders of passports issued by the Serbian Coordination Directorate [in Serbian: *Koordinaciona uprava*]) are exempt from the visa obligation (OJ L 303, 28.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1806/oj).

17 In accordance with Regulation (EU) 2018/1806, nationals of Montenegro holding biometric passports are exempt from the visa obligation (OJ L 303, 28.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1806/oj).

18 In accordance with Regulation (EU) 2018/1806, nationals of Bosnia and Herzegovina holding biometric passports are exempt from the visa obligation (OJ L 303, 28.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1806/oj).

19 In accordance with Regulation (EU) 2018/1806, nationals of Albania holding biometric passports are exempt from the visa obligation (OJ L 303, 28.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1806/oj).

20 In accordance with Regulation (EU) 2018/1806, nationals of Moldova holding biometric passports are exempt from the visa obligation (OJ L 303, 28.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1806/oj).

21 In accordance with Regulation (EU) 2018/1806, nationals of Georgia holding biometric passports are exempt from the visa obligation (OJ L 303, 28.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1806/oj).

22 As of 12 November 2021, the Visa Facilitation Agreement with Belarus has been partially suspended by Council Decision (EU) 2021/1940 of 9 November 2021 on the partial suspension of the application of the Agreement between the European Union and the Republic of Belarus on the facilitation of the issuance of visas (OJ L 396, 10.11.2021, p. 58–60, ELI: http://data.europa.eu/eli/dec/2021/1940/oj).

The Visa Facilitation Agreement between the European Union and the Republic of Belarus entered into force on 1 July 2020. In reaction to the brutal repression against all segments of society in Belarus and the organisation of the travel of migrants towards the European Union's border facilitated by the Belarusian regime, the Visa Facilitation Agreement has been partially suspended by Council Decision (EU) 2021/1940 of 9 November 2021. The Council Decision suspends the application of certain articles of the Visa Facilitation Agreement, which provide facilitations for specific categories of applicants, namely: (i) members of Belarus official delegations including permanent members of such delegations who, following an official invitation addressed to Belarus, should participate in official meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of one of the Member States by intergovernmental organisations, and (ii) members of Belarus national and regional Governments and Parliaments, Belarus Constitutional Court and Belarus Supreme Court, in the exercise of their duties. The application of the following Articles of the Visa Facilitation Agreement are therefore suspended for these groups of applicants: Article 4(1), point (a), on) "Documentary evidence regarding the purpose of the journey", Article 5(1), points (a) and (b), Article 5(2), point (a), on) "Issuing of multiple-entry visas" and Article 6(3), points (a) and (b), on) "Fees for processing visa applications". Consequently, the general rules of the Visa Code apply instead.

The application of other provisions of the Visa Facilitation Agreement is not suspended and the facilitations they provide in respect of the ordinary citizens of Belarus continue to apply.

Following Russia's unprovoked and unjustified military aggression against Ukraine on 24 February 2022, the Visa Facilitation Agreement between the European Union and the Russian Federation, which had entered into force on 1 June 2007[23], has been suspended in whole by the Council Decision of 9 September 2022[24]. Consequently, the general rules of the Visa Code apply by default to Russian nationals applying for short-stay visas. In addition to the suspension, the European Commission issued a series of operational guidelines on visa issuance in relation to Russian applicants on 5 May[25], 9 September[26] and 30 September

[23] OJ L 129, 17.5.2007, p. 27, ELI: http://data.europa.eu/eli/agree_internation/2007/340/oj.

[24] Council Decision (EU) 2022/1500 of 9 September 2022 on the suspension in whole of the application of the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation **(**OJ L 234I , 9.9.2022, p. 1–3, ELI: http://data.europa.eu/eli/dec/2022/1500/oj).

[25] C(2022) 3084, Communication from the Commission providing guidelines on the implementation of Council Decision (EU) 2022/333 of 25 February 2022 on the partial suspension of the application of the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation and on general visa issuance in relation to Russian applicants.

[26] C(2022) 6596, Communication from the Commission providing guidelines on general visa issuance in relation to Russian applicants following Council Decision (EU) 2022/1500 of 9 September 2022 on the suspension in whole of the application of the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation.

2022[27], to assist Member States in dealing with applications lodged by citizens of the Russian Federation, irrespective of their place of residence.

The last guidelines from 30 September 2022 call for reinforced security scrutiny when issuing visas to Russian citizens as well as thorough checks at the EU external borders. They also call on Member States' consulates and border authorities to apply a higher degree of security checks and act in a coordinated manner when carrying out individual assessments of Russian citizens' visa applications and controls at the Union's external borders. At the same time, the guidelines highlight that applicants travelling for essential purposes, including family members of EU citizens, dissidents, independent journalists, civil society representatives and human rights defenders should have the possibility to access the EU.

7. FAMILY MEMBER OF EU/EEA CITIZENS, OF SWISS CITIZENS AND OF BENEFICIARIES OF THE EU-UK WITHDRAWAL AGREEMENT

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

In accordance with Part Two of the EU-UK Withdrawal Agreement, Part III of this Handbook also sets out the specific rules that apply to visa applicants who are non-EU family members of UK nationals benefitting from the Withdrawal Agreement[28].

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

– national long stay visas

The procedures and conditions for issuing national long stay visas (for intended stays of more than 90 days) are covered by national legislation. However, holders of a national long stay visa have the right to travel around for up to 90 days in any 180-day period within the territory of the Member States in accordance with the Convention Implementing the Schengen

[27] C(2022) 7111, Communication from the Commission updating guidelines on general visa issuance in relation to Russian applicants following Council Decision (EU) 2022/1500 of 9 September 2022 on the suspension in whole of the application of the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation, and providing guidelines on controls of Russian citizens at the external borders.

[28] For Iceland, Liechtenstein and Norway, the Separation Agreement between the EEA EFTA countries and the UK applies. For Switzerland, Part Two of the UK-Switzerland Agreement on acquired citizens' rights applies (Part III, Chapter 7).

Agreement and Regulation (EU) No 2016/399[29] (the Schengen Borders Code) as amended by Regulation (EU) No 265/2010 of 25 March 2010[30].

– residence permits

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

– facilitated transit documents (FTD) and facilitated rail transit documents (FRTD).

On 1 July 2003, a specific travel regime for transit between the Kaliningrad region and mainland Russia entered into force. It introduced two types of documents – a facilitated transit document (FTD) and a facilitated rail transit document (FRTD) – needed for crossing the territory of the Member States in order to enable and facilitate the travel of third-country nationals between two parts of their own country which are not geographically contiguous. At present, only Lithuania applies this regime.

The FTD serves for multiple direct journeys by any kind of transport by land through the territory of Lithuania. It is issued by Lithuanian authorities and is valid for a maximum period of up to three years. Journeys based on an FTD cannot exceed 24 hours.

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

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

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

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

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

[29] Regulation (EU) 2016/399 of 9 March 2016 of the European Parliament and of the Council establishing a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/399/oj).

[30] Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa (OJ L 85, 31.3.2010, p. 1, ELI: http://data.europa.eu/eli/reg/2010/265/oj).

PART II: OPERATIONAL INSTRUCTIONS ON THE PROCESSING OF VISA APPLICATIONS

1. Determination of the Competent Member State and of the Competent Consulate of that Member State

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

Legal basis: Visa Code, Article 5

1.1 Application for a uniform visa for a single entry

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

1.1.2 If the travel destination includes more than one Member State, or if several separate visits are to be carried out within a period of two months, the application must be dealt with by the consulate of the main destination. The main destination is understood to be the destination where the applicant intends to spend the longest time or where the main purpose of the intended journey is carried out.

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

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

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

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

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

The Spanish consulate should deal with the application and the visa issued should cover both visits.

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

Example: *An Indian national residing in London is travelling by bus to France, Germany and Austria for the purpose of tourism. She will spend four days in France, four days in Germany and three days in Austria.*

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

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

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

Example: *A Turkish national wishes to travel from Ankara (Türkiye) to London (United Kingdom) by plane via Vienna (Austria) and Frankfurt (Germany) and after his stay in the United Kingdom he wishes to return to Türkiye following another route, via Berlin (Germany) and Budapest (Hungary).*

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

1.2 Application for a uniform visa for multiple entries

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

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

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

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

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

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

Example: *An Armenian national wishes to travel from Yerevan (Armenia) to Cyprus for a two weeks holiday by plane via Austria, including a one-day stopover in Vienna both on the outbound and the return trip.*

The main purpose of the trip is the stay in Cyprus, which is the competent Member State for issuing the necessary (national) short-stay visa. On the basis of that visa, the person should apply for a visa at the Austrian consulate to cover the entries into Austria for the planned day trips in Vienna.

Recommended best practice for seafarers in transit

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

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

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

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

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

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

Scenario 1: The applicant has ‘used’ all 15 days during the first trip or the first visa was a single-entry visa. This means that the first visa is no longer valid after the first trip and the

consulate should issue a new visa with a validity starting on 25 April.

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

Example: *A person holding an ordinary passport where a valid multiple entry visa is affixed needs to travel for professional reasons with his/her diplomatic or service passport.*

A visa may be issued and affixed to the official passport with a validity period based on the intended professional stay(s).

Recommended best practice regarding persons holding several travel documents

Member States should inform persons holding two (or more) valid visas in two (or more) different travel documents that the 90-day rule applies per person and not per travel document.

1.4 Application for an airport transit visa

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

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

The German consulate should deal with the application.

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

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

The Spanish consulate should deal with the application.

It is important to distinguish a situation of onward journey where the third-country national does not leave the international transit area of an airport from situations of onward journey

where the third-country national leaves the international transit area of an airport (see examples in points 8.5.6 and 8.5.7).

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

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

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

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

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

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

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

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

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

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

Legal basis: Visa Code, Article 5(4)

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

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

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

However, considering that this provision is contained in Article 5 of the Visa Code concerning the *"Member State competent for examining and deciding on an application"*, a Member State may, in the absence of the normally competent Member State, agree to examine such applications in individual, exceptional circumstances and take a decision on it

– for reasons of justified urgency, and
– after having obtained the agreement of the normally responsible Member State.

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

Legal basis: Visa Code, Article 18 (2)

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

If the consulate only establishes that it is not competent after the application has been declared admissible and the relevant data have already been entered in VIS, all data shall also be deleted from VIS.

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

1.8 Can a consulate accept an application from an applicant not residing in the jurisdiction of the consulate?

Legal basis: Visa Code, Article 6

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

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

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

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

Example: *A Russian national is working for an independent newspaper in Kazan (Russia), where she resides. Due to threats against her for investigating corruption, she has recently travelled to Armenia. She has now been invited to Poland to present her work.*

The Polish consulate in the Russian Federation, where her residence is established, is competent to examine the visa application. However, due to the exceptional circumstances, the Polish consulate in Yerevan (Armenia) may accept the application.

Further guidelines regarding the consular territorial competence in such cases are contained in the Commission's guidelines on general visa issuance in relation to Russian applicants (C(2022) 7111).

Example: *A Bolivian artist is scheduled to perform in Portugal on 25 May and from 20 February to 15 May she is performing in Canada and the United States.*

Scenario 1: In principle, the person should not be allowed to apply for a visa at a Portuguese consulate in Canada or the United States, because she would have been able to apply while still in her country of residence up to six months before the date of the intended entry into the territory of the Member States.

Scenario 2: The situation would be different if the artist could prove that, before performing

in Canada and the United States, she had continuously performed outside her home country until six months before the assignment in Portugal (e.g. a tour through Asian countries from November to February). In such a case a Portuguese consulate in Canada or the United States should allow the artist to submit the application. The same applies if the performance in Portugal was only added to her tour schedule while the artist was already performing in Canada or the United States.

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

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

Example: *A Moroccan national who spends her holidays in Montreal (Canada) wishes to apply for a visa to travel to Germany at the German consulate in Montreal. She claims that the waiting time for obtaining an appointment for submitting the application at the German consulate in Rabat (Morocco) is too long.*

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

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

The Spanish consulate in Shanghai should deal with the applications.

Example: *A South-African national from Cape Town (South-Africa) has travelled to Johannesburg (South-Africa) for a trade fair. There, he meets a German business person who invites him to come to Munich (Germany) straight away in order to establish a contract for a future business relationship. The South-African national wishes to apply for a visa at the German consulate in Pretoria because the approximate travel/road distance between Johannesburg/Pretoria and Cape Town is around 1400 km.*

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

Example: *An LGBTI+ rights defender from Egypt is currently staying temporarily in Armenia due to threats received as a result of his/her human rights work. The EU Human Rights Defenders mechanism has approved a fully-funded two-month temporary relocation programme in Brussels (Belgium), with a local NGO assigned as the host organisation.*

Belgium is represented by Germany in Armenia. The German consulate may allow the defender to apply for a visa in Armenia.

Example: *An Indian student, who grew up in Bangkok (Thailand), is studying at a university in the United States. Having just finished a semester at a Chinese university (foreseen in her curricula), she is back in Bangkok and wants to travel with her family to Paris for one week. After the return to Bangkok she will travel back to the US to continue her studies.*

The French consulate in Bangkok, should deal with the application as it would be excessive to require the person to travel back to the US to apply for a visa, except in the case that she left her current place of residence in the United States for China less than six months prior to the trip to Paris and there is clear evidence that the travel plans to Paris already existed at that time.

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

Legal basis: Visa Code, Article 7

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

Example: *A holder of an Indonesian diplomatic passport, exempted from the visa*

requirement by Austria, has travelled to Austria to participate in a conference. During his stay, his authorities order him urgently to travel to Germany to participate in a high-level political meeting. Germany does not exempt holders of Indonesian diplomatic passports from the visa obligation.

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

Example: *A human rights defender from Morocco stays in Spain on a visa with limited territorial validity and is invited to an important human rights event at the European Parliament in Brussels, Belgium. Due to a temporary risk around the election period in Morocco, it is momentarily not advisable for him to return to Morocco, his country of residence, to lodge his visa application.*

The Belgian consulate in Spain may deal with the application because it would be risky to require the person concerned to return to his country of residence to apply for a visa.

Example*:*

An Indian student legally residing in Italy for his studies and whose residence permit is being renewed by the Italian authorities wishes to travel to Luxembourg. He lodges his visa application at the consulate of Luxembourg in Rome. Noting that the residence permit presented by the applicant has expired for several months and that a new residence permit has not yet been issued, the consulate refuses the visa application on the grounds that the applicant cannot prove that he is legally present in Italy in accordance with Art. 7 of the Visa Code.

2. LODGING OF AN APPLICATION

2.1 When can an application be lodged?

Legal basis: Visa Code, Article 9(1) and (5)

Applicants shall not be required to appear (in person) at more than one location to lodge an application.

A visa application should, as a rule, be lodged at least 15 calendar days before the intended visit and may be lodged up to six months before the start of the intended visit. It is the applicant's responsibility to take the necessary precautions to respect the deadlines where an appointment system is in place. However, applicants should be informed of the various deadlines (Handbook for the organisation of visa sections and local Schengen cooperation (Visa Code Handbook II), Part I, point 4.).

Seafarers in the performance of their duties may submit an application nine months before the start of the intended visit.

Consulates should in individual cases of justified urgency accept applications lodged later than 15 calendar days before the start of the intended visit.

***Example**: Six weeks before the national elections, an investigative journalist publishes evidence of corruption of one of the lead candidates. After receiving threats, a Dutch human rights defenders organisation invites her for a two-month stay in the Netherlands, so that she can be out of the country until after the elections.*

She initially prefers not to leave and continues to work as a journalist, until she receives more death threats linked to her work. The journalist thus approaches the Dutch consulate to apply for a visa.

The Dutch authorities have no doubt about the *bona fide* status of the applicant. Since all entry conditions are fulfilled, and the intention to return to the country of residence has been demonstrated, the Dutch consulate swiftly issues a uniform visa enabling her to leave the country within a few days and stay in the Netherlands until the elections are held.

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

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

The Austrian consulate could refuse to deal with the application.

A holder of a multiple-entry visa may apply for a new visa before the expiry of the validity of the visa currently held. However, the validity of the new visa must complement the current visa, i.e. a person cannot hold two uniform visas valid for the same period of time. See also point 8.3.

2.2 Appointment system

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

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

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

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

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

Example of justified case of urgency:

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

For the procedural safeguards in relation to family members of EU and Swiss citizens, see Part III.

2.2.2 What is the maximum deadline for obtaining an appointment?

Legal basis: Visa Code, Article 9(2)

The deadlines for obtaining an appointment shall as a rule not exceed two weeks. Consulates and ESPs should cooperate to ensure (if necessary, via staff reinforcement) that this deadline is maintained even in peak season. Measures should be taken to ensure that Member States' consulates' capacity to handle visa applications is adapted to avoid systematic and excessive deadlines for obtaining an appointment (Handbook for the organisation of visa sections and local Schengen cooperation (Visa Code Handbook II), Part I, point 1.2.).

2.2.3 Can 'fast track' procedures for the submission of applications be established?

A consulate may decide to establish a 'fast track' procedure for the submission of applications in order to receive certain categories of applicants, such as businesspersons, short-term students, seafarers or other transportation workers. Such a procedure could be used also for dissidents and/or human rights defenders who urgently need to travel, for example, to avoid a temporary risk of harm before election periods or ahead of the launch of a specific initiative.

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

2.3 Lodging the application

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

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

As a general rule, all applicants are required to appear in person for the collection of fingerprints (Chapter 4), either at the consulate or at the premises of an external service provider authorised to collect visa applications on behalf of a Member State.

If the applicant appears in person for the purpose of collecting fingerprints, the photo requirement can be met by taking a live photo on that occasion.

Applicants may not be required to systematically fill in forms, checklists or questionnaires in addition to the application form. This is without prejudice to the situations where an interview

is carried out during the examination of the application (point 2.3.3.), for which the applicant may also be required to appear in person.

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

2.3.2 What procedure should be followed when applications are lodged by a third party?

Accredited commercial intermediaries, professional, cultural, sports or educational associations or institutions may be allowed to submit applications on behalf of individuals either directly at the consulate or at the premises of an external service provider. Each application form must be signed by the applicant and fingerprints cannot be collected by commercial intermediaries (Chapter 4). Likewise, well-known individual persons may be allowed to lodge their application by a third party.

Member States decide individually whether to accredit commercial intermediaries (Handbook for the organisation of visa sections and local Schengen cooperation (Visa Code Handbook II), Part I, point 3.).

Professional, cultural, sports or educational associations or institutions should obtain prior approval from the Member State concerned before submitting applications on behalf of individual applicants, e.g. sports teams.

Recommended best practice

Member States may also allow a duly mandated third party to lodge the application on behalf of certain (categories of) applicants whose fingerprints have already been collected (see Chapter 4).

Example: *A well-known Malian business person whose fingerprints are already registered in the VIS wishes to apply for a new visa. She draws up a signed authorisation to her assistant who submits the application file to the external service provider.*

Example: *A well-known Ecuadorian human rights defender with an extensive travel history to the EU mandates his assistant to apply for a new visa on his behalf. The competent consulate may decide to process the application.*

Example: *a group of 23 Iranian players of the Iranian National Football Team travelling to Portugal for training.*

An official document issued by the Iranian Football Federation listing the players (name and passport number) should be submitted. The document issued should be duly stamped, and signed, must have the name and position of the signatory and specify the purpose and dates of the intended visit.

2.3.3 Interview of the applicant

Irrespective of where and how the application has been lodged (i.e. at a consulate or via an external service provider) and whether the application has been lodged by the applicant in person, electronically, or by a third party, consular staff may carry out an interview during the examination of the application (point 6.12.).

3. BASIC ELEMENTS OF THE VISA APPLICATION

In order for an application to be considered admissible (point 3.5.), the following must be fulfilled:

– a filled in and manually or electronically signed application form (in paper or electronic format), a valid travel document and one photograph (scanned or taken at the time of application) must be submitted;

– the visa fee must have been paid;

– where applicable, biometric data must be collected.

3.1 Travel document

Legal basis: Visa Code, Article 12

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

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

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

Example: *After having been involved in research projects in the Netherlands and Germany, an Indonesian scientist starts working on research projects in Hungary and has to travel there approximately every three months between January 2021 and January 2025. He applied for a multiple-entry visa on 1 November 2020, presenting a travel document that is valid until 15 March 2023.*

Although the person concerned can be considered 'bona fide' – after having used his previous uniform visas correctly – and could be granted a multiple-entry visa valid for the entire period, he should only be issued a multiple-entry visa valid until 15 December 2022.

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

Example *of a justified case of urgency that could allow for disregard of the rule on the validity of the travel document: A Philippine national urgently needs to travel to Spain where*

a relative has been the victim of a serious accident. His travel document is only valid for 1 month beyond the intended return.

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

***Example:** A human rights defender, journalist or dissident urgently needs to travel to the EU, where he is invited by a well-known dissident and/or human rights organisation due to a temporary yet imminent risk to his personal security. His travel document will expire in little more than 2 months.*

The competent consulate could decide to accept the application.

3.1.2 How many blank pages should the travel document contain?

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

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

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

Recommended best practice in relation to persons holding a valid visa in a travel document which does not contain enough blank pages for entry and exit stamps

A third country national who holds a valid visa in a 'full' but invalidated travel document due to frequent travelling can request that a new visa for the remaining period of validity is affixed in a new travel document. The valid visa shall be revoked and a new visa, with a validity corresponding to the remaining period of validity of the first visa, shall be issued as quickly as possible and without charging the visa fee.

3.1.3 How to treat travel documents issued more than 10 years prior to the visa application

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

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

***Example:** An Afghan national residing in Türkiye had received a transplant in a European hospital while he was legally staying in the EU 15 years ago. Since his return to Türkiye, his passport, which was originally issued more than 10 years ago, has been extended by the*

Afghan consulate with a sticker. The standard medical monitoring is done from Türkiye; however, at a routine checkup, he is advised to immediately visit the same hospital in the EU where the transplant was performed for more complex examinations.

The consulate of the Member State where the hospital is located can choose to process his application on humanitarian grounds, because it would be unreasonable to require him first to obtain a new travel document. If eventually a positive decision is taken on the application, a visa with limited territorial validity allowing the holder only to travel to the issuing Member State shall be issued.

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

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

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

It should be verified whether the travel document is recognised by the Member State receiving the visa application and by the other Member States. Travel documents not recognised by all Member States may be accepted but particular rules apply in relation to the type of visa to be issued. Member States' (non)recognition of travel documents is set out in the table of travel documents entitling the holder to cross the external borders and which may be endorsed with a visa, Parts I, II and III (Annex 10).

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

In case the Member State receiving the visa application does not recognise the applicant's travel document, a visa may be issued but has to be affixed on a separate sheet for affixing a visa (point 8.5.3. and point 10.2.1.) and its validity shall be limited to the territory of the issuing Member State. If a representing Member State does not recognise a travel document submitted with an application for an intended stay in the represented Member State[31], the representing Member State shall affix a visa with limited territorial validity valid for the Schengen States minus the representing Member State (and any other Member States not recognising the travel document) in the travel document.

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

3.1.5 How to treat forged travel documents

Legal basis: Visa Code Article 19(4)

[31] And if the representation agreement provides for the representing Member States to accept such visa applications.

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

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

In both cases, the travel document should be handled according to the recommended best practice set out in point 6.4.

3.1.6 Copies of pages of the travel document

If the consulate handling the application considers it relevant to keep a copy of the biodata page of the travel document, applicants may be asked to submit that. Applicants should, however, not be requested to systematically present copies of other pages of their current or expired travel documents. If the consulate considers it relevant to keep copies of pages of the travel document, such copies or scans may be taken while examining the application, which will also ensure better quality of the information. Member States may require the external service provider to systematically make copies and submit them as part of the application file to the consulate.

3.2 Application form

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

The uniform application form (Annex 9) shall be used for the application for visas for stays not exceeding 90 days per 180-day period. The uniform form cannot be altered and additional fields (or pages) may not be added, but the application form may be presented in electronic form or be printed on several pages. The content of an electronic version of the form shall correspond strictly to the content of the printed uniform application form even if its layout is different.

Non-EU family members of EU and Swiss citizens (spouse, child or dependent ascendant) should not fill in the fields marked by * while exercising their right to free movement (Part III), but they should fill in fields 17 and 18.

The same applies to non-EU family members who fall under the EU-UK Withdrawal Agreement and seek to join the UK national Withdrawal Agreement beneficiary in the host State (Article 14(3) of the EU-UK Withdrawal Agreement)[32].

[32] This also applies to non-EU family members who fall under the Separation Agreement between the UK and the EEA EFTA countries (Iceland, Liechtenstein, Norway) or the UK-Switzerland Agreement on citizens' rights and who seek to join the beneficiary of the respective agreement in the host state.

Applicants or categories of applicants travelling for a specific purpose may not be required to systematically fill in forms, checklists or questionnaires in addition to the uniform application form.

Each applicant must submit a filled in and signed application form. If several persons (minors or spouses) are covered by the same travel document, individual application forms must be filled in and signed by the persons concerned. If the applicant is a minor, the application form must be signed by the person(s) exercising the parental authority or the legal guardian.

Member States should make sure that visa applicants and sponsors (data subjects) are provided with the relevant information under the General Data Protection Regulation (GDPR)[33].

Recommended best practice
General Data Protection Regulation – information to be provided to visa applicants concerning the personal data provided upon application

'Information on the processing of your personal data:

The collection of your personal data required by this application form, the taking of your photograph and the taking of your fingerprints are mandatory for the examination of your visa application. Failure to provide such data will result in the application being inadmissible.

The authorities responsible for processing the data in [name of the Member State concerned] are: [name, postal address, website and email of the responsible processing authorities].

Contact details of the data protection officer: [postal address and email of the data protection officer].

The legal basis for the collection and processing of your personal data is set out in Regulation (EC) No 767/2008 (VIS Regulation), Regulation (EC) No 810/2009 (Visa Code) and Council Decision 2008/633/JHA.

The data will be shared with the relevant authorities of the Member States (Belgium, Bulgaria, Czechia, Denmark, Germany, Estonia, Greece, Spain, France, Croatia, Italy, Latvia, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden, Iceland, Liechtenstein, Norway, Switzerland) and processed by those authorities for the purposes of a decision on your visa application.

The data and data concerning the decision taken on your application or a decision whether to annul, revoke or extend a visa issued will be entered into, and stored in the Visa Information System (VIS) for a maximum period of five years, during which it will be accessible to the visa authorities and the authorities competent for carrying out checks on visas at external

[33] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, page 1, ELI: http://data.europa.eu/eli/reg/2016/679/oj).

borders and within the Member States, immigration and asylum authorities in the Member States for the purposes of verifying whether the conditions for the legal entry into, stay and residence on the territory of the Member States are fulfilled, of identifying persons who do not or who no longer fulfil these conditions, of examining an asylum application and of determining responsibility for such examination. Under certain conditions, the data will be also available to designated authorities of the Member States and to Europol for the purpose of the prevention, detection and investigation of terrorist offences and of other serious criminal offences.

Your personal data might also be transferred to third countries or international organisations for the purpose of proving the identity of third-country nationals, including for the purpose of return. Such transfer may only take place under certain conditions[34]. You can contact the authority responsible for processing the data (see contact details above) to obtain further information on these conditions and how they are met in your specific case.

Under the General Data Protection Regulation[35] and the VIS Regulation[36], you are entitled to obtain access to your personal data, including a copy of it, as well as the identity of the Member State that transmitted it to the VIS. You also have the right that your personal data, which is inaccurate or incomplete be corrected or completed, that the processing of your personal data be restricted under certain conditions, and that your personal data processed unlawfully be erased.

You may address your request for access, rectification, restriction or erasure directly to the authority responsible for processing the data (see contact details above). Further details on how you may exercise these rights, including the related remedies according to the national law of the State concerned, are available on its website and can be provided upon request.

You may also address your request to any other Member State. The list of competent authorities and their contact details is available at*: [website providing the list and contact details of Member States' visa authorities*[37]*].*

You are also entitled to lodge at any time a complaint with the national data protection authority of the Member State of the alleged infringement, or of any other Member State if you consider that your data have been unlawfully processed. The data protection authority of *[name of the Member State concerned]* is: *[Name, postal address, website and email of the data protection authority.'*

Please refer to the competent visa authority for information on the processing of other personal data that may be necessary for the examination of your application.'

3.2.1 In which languages should the application form be available?

Legal basis: Visa Code, Article 11(3)

The application form shall, as a minimum, be available in

[34] Article 31 of Regulation (EC) No 767/2008 (VIS Regulation) ELI: http://data.europa.eu/eli/reg/2008/767/oj .

[35] Articles 15 to 19 of Regulation (EU) 2016/679 (General Data Protection Regulation) ELI: http://data.europa.eu/eli/reg/2016/679/oj .

[36] Article 38 of Regulation (EC) No 767/2008 (VIS Regulation) ELI: http://data.europa.eu/eli/reg/2008/767/oj.

[37] Applying for a Schengen visa - European Commission (europa.eu)

(a) the official language(s) of the Member State for which a visa is requested or of the representing Member State, and

(b) the official language(s) of the host country (integrated into the form).

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

If the official language(s) of the host country is/are not integrated into the form, a translation into that /those language(s) shall be made available separately.

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

Legal basis: Visa Code, Article 11(6)

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

Recommended best practice in relation to information on completing the application form

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

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

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

3.3 The photograph

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

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

3.3.1 What are the technical standards for the photograph?

The photograph to be submitted by applicants must fulfil the standards set out in the photograph specifications as set out in the International Civil Aviation Organization (ICAO) document 9303 Part 1, 6th edition (Annex 11).

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

If the applicant appears in person for the purpose of collecting fingerprints, the photo requirement can be met by taking a live photo on that occasion.

3.4 The visa fee

Legal basis: Visa Code, Article 16

3.4.1 Does the same visa fee apply to all applicants?

As a general rule a fee of 90 EUR, applies to individual applicants irrespective of the type of visa applied for and irrespective of where the application is lodged (directly at the consulate by the applicant himself or by a commercial intermediary, cultural, etc. association, via an external service provider or at the external borders). There are, however, general exemptions or reductions of this fee, covered either by the Visa Code, by visa facilitation agreements, or by the particular rules covering family members of EU and Swiss citizens and of UK nationals who are beneficiaries of the EU-UK Withdrawal Agreement[38] (Part III of this Handbook). The visa fees set in visa facilitation agreements also apply when nationals of the third countries concerned apply for a visa at the external borders.

Member States may waive or reduce the fee in individual cases and for certain other categories of applicants.

Except for the situations covered by certain visa facilitation agreements, it is not possible to apply or accept an increased 'fast track fee' if an accelerated handling of an application is requested.

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

Legal basis: Visa Code, Article 16(2) and (4)

Visa fee rates	General rules	Visa Facilitation Agreements
0 EUR	Children 0-6 years (i.e. children that are 6 years of age minus 1 day) (1)	See the relevant agreement and implementing guidelines
	Non-EU family members of EU citizens covered by Directive 2004/38/EC and of Swiss citizens, as well as family members who fall under the EU-UK Withdrawal Agreement and seek to join the UK national	

[38] Similar specific rules apply to family members who fall under the Separation Agreement between the UK and the EEA EFTA countries (Iceland, Liechtenstein, Norway) or the UK-Switzerland Agreement on Citizens' rights.

	Withdrawal Agreement beneficiary in the host State[39] (Part III of this Handbook)	
	School pupils, students, post-graduate students and accompanying teachers who undertake stays for the purpose of study or educational training	
	Researchers from third countries travelling for the purpose of carrying out scientific research (2)	
	Representatives of non-profit organisations aged 25 years or less participating in seminars, conferences, sports, cultural or educational events organised by non-profit organisations (3)	
45 EUR	Children 6-12 (until the age of 12 years minus one day (1)	
70 EUR 67,50 EUR 35 EUR	Specific fees under Visa Facilitation Agreements	See the relevant agreement and implementing guidelines

(1) The calculation should be based on the date of submission of the application.

(2) Scientific researchers as defined in Article 3(2) of Directive (EU) 2016/801 of the European Parliament and of the Council[40] travelling within the Community for the purpose of carrying out scientific research or participating in a scientific seminar or conference, Annex 12.

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

[39] Similar specific rules apply to family members who fall under the Separation Agreement between the UK and the EEA EFTA countries (Iceland, Liechtenstein, Norway) or the UK-Switzerland Agreement on Citizens' rights.

[40] OJ L 132, 21.5.2016, p. 21, ELI: http://data.europa.eu/eli/dir/2016/801/oj.

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

Legal basis: Visa Code, Article 16(5)

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

Defined categories of persons 0 EUR	Children between 6-18 (i.e. children that are 18 years of age minus 1 day) (1)
	Holders of diplomatic and service passports
	Participants aged 25 years or less participating in seminars, conferences, sports, cultural or educational events organised by non-profit organisations (2)

(1) The calculation should be based on the date of submission of the application.

(2) In this context a 'non-profit' organisation means an organisation officially registered as a non-profit organisation.

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

3.4.3.2 Waiving or reduction of the visa fee in individual cases

Legal basis: Visa Code, Article 16(6)

Member States may decide to waive or reduce the visa fee in individual cases on the basis of particular interests in order to promote cultural or sporting interests as well as interests in the field of foreign policy, development policy and other areas of vital public interest or for humanitarian reasons (e.g. in case of visa applicants from a disadvantaged background, dissidents and/or human rights defenders) or because of international obligations.

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

Legal basis: Visa Code, Article 16(7)

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

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

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

The frequency of the review of the exchange rate used in the account section of the consulate

and possible adjustment of the visa fee depends on the stability of the exchange rate of the local currency towards the euro, and the euro foreign exchange rate should be verified at least once a month although shorter intervals may be justified. Member States should agree on a common procedure within local Schengen cooperation.

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

3.4.5 When and how should the visa fee be paid?

Legal basis: Visa Code, Article 19(1)

Payment of the visa fee is part of the criteria to be fulfilled for an application to be considered admissible, therefore the visa fee should be paid when the application is lodged.

Applicants must be able to pay the visa fee via at least one widely available means of payment in each location, without incurring additional mandatory transaction fees or bank fees.

3.4.5.1 Issuance of a receipt

Legal basis: Visa Code, Article 16(8)

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

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

3.4.6 Is the visa fee refundable?

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

Recommended best practice
with regard to reimbursement of the visa fee

The visa fee should be reimbursed in the currency in which it was paid and, in case of non-cash payment, via the means of payment used by the applicant.

3.5 Admissibility

Legal basis: Visa Code, Articles 10 and 19

The admissibility of an application can only be verified by the competent consulate irrespective of where the application has been lodged. In case it turns out that an application is inadmissible, the procedure is described in point 3.6. should be followed.

Admissibility means that the formal admissibility criteria are fulfilled and the examination can start. 'Inadmissibility' is not a ground for refusal under Article 32 of the Visa Code but means that the conditions for admissibility have not been met.

3.5.1 When is an application admissible?

Where the deadlines for submission of an application have been respected (point 2.1.) and the basic elements for an application to be considered admissible have been submitted (filled in and signed application form, valid travel document, a photograph) and the visa fee has been paid and, if applicable, biometric data has been collected, the application shall be considered admissible and the examination can start (point 6.1.).

3.5.2 How should an admissible application be treated?

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

3.6 How should an inadmissible application be treated?

If the application is inadmissible, the application form and any documents submitted should be returned to the applicant, the collected biometric data should be destroyed, the visa fee should be reimbursed, and the application shall not be further examined**,** and no application file should be created in the VIS. If application data have already been entered into the national IT system, they should also be deleted from there.

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

3.7 Can an inadmissible application be examined in certain cases?

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

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

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

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

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

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

4. BIOMETRIC IDENTIFIERS

The collection and registration of applicants' biometric identifiers in the VIS is compulsory.

4.1 What biometric identifiers should be collected?

The following biometric identifiers should be collected:

– a digital photo (Annex 11);

– all ten fingerprints taken flat and collected digitally.

Fingerprints should be collected in accordance with Commission Decision 2009/756/EC laying down specifications for the resolution and use of fingerprints for biometric identification and verification in the VIS[41]. If the fingerprints taken do not match the applicable technical quality standards, the fingerprints must be taken again after cleaning of fingers and equipment. The fingerprints with the best quality value should be uploaded to the VIS. It shall be ensured that appropriate procedures guaranteeing the dignity of the applicant are in place in the event of there being difficulties in enrolling the biometric data.

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

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

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

First-time applicant must have their photograph taken live or scanned and their fingerprints collected when the application is submitted. Consulates and external service providers should not compromise the quality of the fingerprints or the photograph for the sake of speeding up the lodging of the application.

Applicants who, for reasons of temporary impossibility, have given fewer than ten fingerprints or none at all, shall be considered first-time applicants for the purpose of the next visa application, and all fingerprints shall be collected.

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41 Commission Decision of 9 October 2009 laying down specifications for the resolution and use of fingerprints for biometric identification and verification in the Visa Information System (OJ L 270, 15.10.2009, p. 14, ELI: http://data.europa.eu/eli/dec/2009/756/oj).

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

Persons whose fingerprints have been collected within the previous 59 months should not have the fingerprints collected again, irrespective of how the collection of the application is organised. The fingerprints already stored in the VIS should be copied. Applicants must indicate on the application form (field 28) when they last had their fingerprints taken.

The external service provider (which does not have access to the VIS) should be instructed to rely on the applicant's statement in field 28 of the application form. If the applicant has not filled in the field and does not remember, the external service provider may recommend that fingerprints be collected again and inform the applicant that in the event that fingerprints have not been registered, he will be called to the external service provider or the consulate again.
If a consulate observes data quality issues in a certain location, the external service provider should be instructed to inform applicants whose fingerprints have been collected (1) that they are not obliged to give fingerprints again, and (2) that in the event that fingerprints cannot be copied for technical reasons, he might be called to the external service provider or the consulate again. To prevent that, applicants may be given the possibility of providing fingerprints again.

Member States should be aware that uploading new sets of fingerprints of the same person in VIS too frequently increases the risk of attaching biometrics of lower quality (knowing that the quality is influenced negatively by age) which will thus contribute to decreasing the accuracy of the biometric matching.

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

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

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

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

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

Applicants may also request that their fingerprints be collected if they do not remember whether their fingerprints have been collected within the previous 59 months.

4.3 Which applicants are exempted from giving fingerprints?

Legal basis: Visa Code, Article 13(7)

The following categories of persons are exempted from giving fingerprints:

- children under the age of 12 years (i.e. children that are 12 years of age minus 1 day old);
- persons for whom fingerprinting is physically impossible;
  - if such physical impossibility is of a temporary nature, the applicant shall be required to provide explanation for such impossibility and may be required to provide medical certification for such impossibility;
  - if fingerprinting of fewer than ten fingers is possible, then the maximum number of fingerprints shall be collected;
- heads of State or government and members of a national government with accompanying spouses, and the members of their official delegation when they are invited by Member States' governments or by international organisations for an official purpose;
- sovereigns and other senior members of a royal family, when they are invited by Member States' governments or by international organisations for an official purpose.

5. SUPPORTING DOCUMENTS AND TRAVEL MEDICAL INSURANCE

Legal basis: Visa Code, Article 14 and Annex II

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

On the basis of the content of this chapter Member States' consulates in any given location shall prepare a harmonised list of supporting documents[42] in order to take account of local circumstances. The harmonised lists is adopted by the Commission after consultation with the Visa Committee in accordance with the procedure set out in the Visa Code (Article 14(5a)) and further described in the Handbook for the organisation of visa sections and local Schengen cooperation (Visa Code Handbook II, Part II, point 4.4.). Implementing decisions establishing harmonised lists of supporting documents are legally binding on Member States. Harmonised lists of supporting documents do not apply to non-EU family members of mobile

[42] Available here: https://home-affairs.ec.europa.eu/regulation-ec-no-8102009-european-parliament-and-council-13-july-2009_en

EU citizens covered by Directive 2004/38/EC[43], nor to family members of beneficiaries of the EU-UK Withdrawal Agreement[44].

The number and type of supporting documents should be adapted to

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

As regards the specific rules applying to the documentary evidence of the purpose of travelling for categories of persons covered by Visa Facilitation Agreements, see the respective guidelines.

For the procedural safeguards in relation to non-EU family members of EU/EEA citizens, of Swiss citizens and of beneficiaries of the EU-UK Withdrawal Agreement (Part III of this Handbook).

5.1 Supporting documents

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

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

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

5.1.2 Should the supporting documents be translated?

As a rule, consulates' capacity and organisation should ensure the examination of supporting documents in the main official languages of the host country. Translation of supporting documents entails additional costs for applicants and therefore translation of all document should not be required systematically but only in individual and exceptional cases. Translation should not be required of 'standard' civil registry documents of the host country as consular

[43] For Switzerland, the Agreement of 21 June 1999 between the European Community and its Member States, of one part, and the Swiss Confederation, of the other, on the free movement of persons (AFMP) applies.

[44] For Iceland, Liechtenstein and Norway, the Separation Agreement between the UK and the EEA EFTA countries (Iceland, Liechtenstein, Norway) applies. For Switzerland, the UK-Switzerland Agreement on citizens' rights applies.

staff are exepected to be familiar with them. E.g. the 'Hukou' (household registration) used in China.

Therefore, the Member States should inform applicants which documents must be translated and into which language (i.e. the widely known and commonly accepted languages of communication in the given location, e.g. English or French). Member States should in local Schengen cooperation seek to harmonise practices with regard to the translation of supporting documents.

5.1.3 Should the supporting documents be authenticated or legalised

Authentication, legalisation or apostillation of supporting documents should be required only in individual and exceptional cases. However, if in the given location there is a tendency to submit a high number of fraud/falsified documents of the same type (e.g. bank statements, employment contracts), authentication/legalisation or apostillation may be required systematically, provided that this practice is followed by all consulates in the given location.

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

Supporting documents should provide evidence of the following:

– the purpose of the intended journey;

– proof of accommodation, or proof of sufficient means to cover the applicant's accommodation;

– that the applicant possesses sufficient means of subsistence both for the duration of the intended stay and for the return to his/her country of origin or residence, or for the transit to a third country into which he/she is certain to be admitted, or that he is in a position to acquire such means lawfully, in accordance with Article 6(1), point (c), and Article 6(3) of the Schengen Borders Code;

– information enabling an assessment of the applicant's intention to leave the territory of the Member States before the expiry of the visa applied for.

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

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

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

An offer of accommodation or sponsorship may have an impact on the amount of the requested means of subsistence.

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

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

A. DOCUMENTATION RELATING TO THE PURPOSE OF THE JOURNEY	
(1) for business trips or trips for professional reasons:	
	Additional comments and examples
a) an invitation from a firm or an authority to attend meetings, conferences or events connected with trade, industry or work;	Invitations should preferably be personalised, but generic invitations may be accepted. The Visa Code does not provide a legal basis for drawing up national forms for invitations. However, harmonised lists of supporting documents should provide details on the content of such invitations to ensure harmonised practices. Furthermore, if the applicant presents a national form of proof of sponsorship or private accommodation as part of the documentation regarding the means of subsistence (point 5.2.2), a separate invitation should normally not be required, except in case the sponsor is different from the inviting firm or authority.
b) other documents which show the existence of trade relations or relations for work purposes;	*Examples*: Contracts, payment of invoices, list of orders.
c) entry tickets for fairs and congresses, if appropriate;	
d) documents proving the business activities of the company;	*Examples*: Annual business register, extract of commerce register, annual report.
e) documents proving the applicant's employment status in the company;	*Examples:* Contract, proof of social security contributions.

Specific categories of persons	
f) Lorry drivers	A written request from the national association (union) of carriers of the host country providing for international road transportation, stating the purpose, duration and frequency of the trips. A written request from the partner company based in the Member State. Driver's licence for international transport.
g) Seafarers	Seaman's book, if relevant. However, the vast majority of seafarers, especially those working onboard cruise ships do not hold a seaman's book. Covering letter from recruiting company stating the name and the rank of the seafarer. Vessel's name, vessel's arrival date in port and the date of the seafarer's joining of the vessel – keeping in mind that the shipping companies who employ the seafarers often do not know in advance on which ship going to which Member State a seafarer is to embark (see recommended best practice under point 1.2).
h) persons travelling for the purpose of carrying out paid activity	The applicant must provide a work permit or any similar document as provided by the national legislation of the Member State where a paid activity is to be carried out, if applicable. Additional documents required under national law for the planned activity may also be requested (e.g., social insurance, professional qualification).
(2) for journeys undertaken for the purposes of study or other types of training:	
a) a certificate of enrolment at an educational establishment for the purposes of attending vocational or theoretical courses in the framework of basic and further training;	
b) student cards or certificates of the	A student card proving the status of the

courses to be attended;	applicant in his/her country of residence is not sufficient as supporting document. A student card can only be accepted as a supporting document if it is issued by the host university, academy, institute, college or school where the studies or educational training is going to take place.
(3) for journeys undertaken for the purposes of tourism or to visit family or friends:	
an invitation from the host if staying with one;	Invitations should be personalised. The Visa Code does not provide a legal basis for drawing up national forms for invitations. However, harmonised lists of supporting documents should provide details on the content of such invitations to ensure harmonised practices. Furthermore, if the applicant presents a national form of proof of sponsorship or private accommodation as part of the documentation regarding the means of subsistence (point 5.2.2), a separate invitation should normally not be required, except in case the sponsor is different from the inviting host. When the data regarding the host have not been verified by the authorities of the Member State dealing with the application, the applicant should present: A copy of ID card or bio data page of the host's passport; residence permit; proof of residence (property title deeds, rental agreements etc., proof of income).
a document from the establishment providing accommodation or any other appropriate document indicating the accommodation envisaged;	It should be noted that a hotel reservation is a weak means of proving purpose of travel considering the ease with which such reservations may be cancelled free of charge. Other appropriate document may be: a document proving the existence of a rental

	agreement, or a property title deed, in the applicant's name, to a property situated in the Member State of destination.
confirmation of the booking of an organised trip or any other appropriate document indicating the envisaged travel plans; in the case of (airport) transit: visa or other entry permit for the third country of destination; tickets for onward journey;	Documents regarding the itinerary should be completed with documents regarding the means of transport: proof of arrangements made for onward journey or, driver's licence, car insurance (if travelling by private car).
(4) for journeys undertaken for political, scientific, cultural, sports or religious events or other reasons:	
a) "active" participants (e.g. lecturers, speakers, athletes, performers)	
- invitation, enrolments or programmes stating (wherever possible) the name of the host organisation and the length of stay or any other appropriate document indicating the purpose of the journey;	The supporting document should mention the duration of the event. In the case of an invitation by a non-profit organisation to an event: representatives of non-profit organisation: should present an official document stating that the organisation is registered as such and that the applicant represents it. Where relevant, it should be established within local Schengen cooperation, which is the authority competent for such registration. Invitations should preferably be personalised, but generic invitations may be accepted. The Visa Code does not provide a legal basis for drawing up national forms for invitations. However, harmonised lists of supporting documents should provide details on the content of such invitations to ensure harmonised practices.
b) "passive" participants (e.g. audience, supporters)	
- entry tickets, invitations;	In the case of an invitation by a non-profit

	organisation to an event: Participants in events organised by non-profit organisation should present an official document stating that the organisation is registered as such. Where relevant, it should be established within local Schengen cooperation, which is the authority competent for such registration. Invitations should preferably be personalised, but generic invitations may be accepted. The Visa Code does not provide a legal basis for drawing up national forms for invitations. However, harmonised lists of supporting documents should provide details on the content of such invitations to ensure harmonised practices.
5) for journeys of members of official delegations who, following an official invitation addressed to the government of the third country concerned, participate in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of a Member State by intergovernmental organisations:	
a letter issued by an authority of the third country concerned confirming that the applicant is a member of the official delegation travelling to a Member State to participate in the above-mentioned events, accompanied by a copy of the official invitation;	Holders of diplomatic, service/official or special passports: such passports are specifically issued to be used for journeys with an official duty purpose. Therefore, it should be the issuing authority (or the competent administration) which applies for the visa. Additionally a *note verbale* from the Ministry of Foreign Affairs of the issuing authorities must be presented (or, if the application is submitted in a country other than the applicant's country of origin, from the third country's diplomatic mission). This includes events hosted by an EU institution.
6) for journeys undertaken for medical treatment:	
- certificate from a medical doctor (designated by the consulate) and/or a medical institution; - an official document of the receiving	

medical institution confirming that it can perform the specific medical treatment and the patient will be accepted accordingly; - proof of sufficient financial means to pay for the medical treatment and related expenses; - proof of prepayment of the treatment**;** - any other correspondence between the sending medical doctor and the receiving hospitals, if available.	

B. DOCUMENTATION ALLOWING FOR THE ASSESSMENT OF THE APPLICANT'S INTENTION TO LEAVE THE TERRITORY OF THE MEMBER STATES BEFORE THE EXPIRY OF THE VISA	
The assessment of the applicant's intention to leave the territory of the Member State before the expiry of the visa depends mainly on the stability of his/her socio-economic situation in his/her country of residence: stability of the employment, of the financial situation, of the family ties. This assessment leads to the determination of a risk.	
	Additional comments and examples
1) reservation of or return or round ticket.	A paid return ticket should not be required upon lodging but may be requested in exceptional circumstances when the visa has been issued. As ticket reservation is often not possible, in such cases the consulate should ascertain that the applicant has sufficient financial means to buy the tickets.
2) proof of financial means in the country of residence.	'Financial means may be proved by recent bank statements showing movement of means over a certain period (minimum the last three months). *Note:* The proof of financial means may be replaced in certain cases by proof of sponsorship (point 5.2.2). In this case, the applicant's will to return should be substantiated by other documents.

3) proof of employment or professional activity.	'Employment' may be proved by a work contract; certificate of employment; information on professional status, bank statements, and proof of social security contribution.
4) proof of real estate property.	'Real estate property' may be proved by title-deed.
5) proof of integration into the country of residence: family ties; professional status.	'Family ties' may be proved by a marriage certificate or any document regarding parents and/or children and their place of residence.

C. DOCUMENTATION IN RELATION TO THE APPLICANT'S FAMILY SITUATION	
	Additional comments and examples
(1) **Minors:** consent of person(s) exercising parental authority or legal guardian (when a minor does not travel with them);	Consent should be requested from applicants less than 18 years of age, irrespective of the age of majority in the country of residence, and therefore irrespective of discrimination which may exist between the sexes regarding the age of majority. The consent letter should contain the contact details of the persons giving the consent. Such consent should be required for each trip that is envisaged at the time of the visa application. The consulate should accept a consent given in the legal form of the country where the minor resides. See also point 6.15. A parent may travel with the minor without the other parent's consent, or against the other parent's wishes, when the parent travelling with the child has sole parental responsibility for the child (established by law or by a court or the relevant competent authority, according to the national law of the country where the minor resides) or where a

	court measure allows such travel.
Other relevant documents. Recent certified extract of custody register. Recent certified extract of residence and/or a certified copy of the birth certificate. Custody or access court order, if relevant. Copy of the divorce decree, if relevant.	
(2) proof of family ties with the host/inviting person.	

5.2.2 Proof regarding the means of subsistence

Applicants shall present proof that they possess sufficient means of subsistence both for the duration of the intended stay and for the return to their country of origin or residence, or for the transit to a third country into which they are certain to be admitted, or that they are in a position to acquire such means lawfully. Applicant should also submit proof of accommodation, or proof of sufficient means to cover accommodation, during the intended stay.

The proof may be constituted by:

(a) recent bank account statements showing movements over a certain period (at least the last three months)

(b) credit card(s) and a credit card account statement

(c) traveller's cheques

(d) salary slips

(e) certificate of employment

(f) proof of sponsorship or private accommodation (national form according to Article 14(4) of the Visa Code, as applied by Member States), or

(g) prepaid hotel reservation.

Where relevant, possession of "sufficient means of subsistence" should be calculated on the basis of the reference amounts set by Member States (Annex 18).

Account should be taken as to whether:

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

Attention is drawn to the fact that, in some countries, a loan may be obtained in cash just for the purpose of presenting the equivalent of the requested means of subsistence to the consulate and the cash is returned when the visa application has been submitted. Cash should, in principle, not be accepted as proof of means of subsistence.

5.2.3 Treatment of "bona fide" applicants

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

However, consulates may, in relation to reliable international companies, accept that specific employees in a given third country benefit from a "bona fide" status. Specific supporting documents should be required to prove this status and the company concerned should designate a contact person who can confirm the authenticity of the submitted supporting documents. Consulates may choose to apply the same principles to grant "bona fide" status to human rights defenders, journalists and dissidents, based on designations by reliable inviting organisations.

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

5.2.4 Specific supporting documents when applying for an airport transit visa

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

– proof of plausible/logical intended itinerary;

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

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

– proof of the intention of carrying out the onward journey: continuation ticket, visa for the next and/or final destination;

– the applicant's intention not to enter the territory of the Member States should be verified on the basis of an assessment of the stability of his/her socio-economic situation in his/her country of residence.

5.3 Travel Medical Insurance

Legal basis: Visa Code, Article 15

When applying for a uniform visa for one or two entries, the applicant shall present such proof to cover the intended visit(s) upon submission of the application. In case a multiple-entry visa is applied for, the applicant shall present proof of travel medical insurance covering the first intended stay. The consulate is responsible for verifying that the insurance presented complies with the provisions of the Visa Code.

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

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

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

Non-EU family members of EU/EEA citizens who are covered by Directive 2004/38/EC and of Swiss citizens as well as non-EU family members who fall under the EU-UK Withdrawal Agreement and seek to join the UK national Withdrawal Agreement beneficiary in the host State[45] (Part III of this Handbook) are exempted from the requirement to present travel medical insurance. This exemption is in line with the exemption of this category of persons from filling in field 32 of the application form.

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

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

5.3.2 What is an adequate travel medical insurance?

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

The minimum coverage shall be EUR 30 000.

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[45] The same applies to non-EU family members who fall under the Separation Agreement between the UK and the EEA EFTA countries (Iceland, Liechtenstein, Norway) or the UK-Switzerland Agreement on citizens' rights and who seek to join the beneficiary of the respective agreement in the host state.

As part of local Schengen cooperation, information on insurance companies offering adequate travel medical insurance, including verification of the type of coverage, should be shared and regularly updated (Handbook for the organisation of visa sections and local Schengen cooperation (Visa Code Handbook II), Part II, point 1.3.).

6. EXAMINATION OF THE VISA APPLICATION

Legal basis: Visa Code, Article 21

6.1 Basic principles

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

– ascertain whether the applicant fulfils the entry conditions,

– assess the risk of illegal immigration and the applicant's intention to leave the territory of the Member States before the expiry of the visa applied for, and

– assess whether the applicant presents a risk to the security or public health of the Member States.

The depth of the examination depends on the risk presented by the applicant according to his/her nationality, local circumstances, his/her profile and personal history. Consulates should take account of the individual applicant's 'visa history' which includes the correct use of visas issued by other Member States irrespective of the purpose of earlier trips, if such purpose is indicated on the visa sticker.

Travelling for the purpose of tourism on a valid multiple-entry visa applied for the purpose of business cannot be considered abuse and neither can travelling to other Member States than the issuing Member State, if the visa was first used in accordance with the intention and main destination as stated at the time of application.

In case abuse is suspected, consulates should thoroughly investigate all relevant circumstances and ask the applicant to provide an explanation. In particular, the Member State of entry or exit as indicated by the entry/exit stamps is not reliable evidence for the Member State of the main destination, especially if the applicant has travelled by air.

Example: *An Algerian applicant receives a visa to travel to Malta (he is an English teacher in Algiers and receives a refresher course in Malta). He presents a flight reservation in Algiers-Rome-Malta. He uses the visa correctly, except that the entry/exit stamps are from Barcelona. At the next application, the next visa is refused because the consulate concludes that the applicant did not travel to Malta on the previous trip, but had intended all along to travel to Spain.*

This decision is premature, since a check of airline routes and schedules shows that Algiers-Barcelona-Malta is also a possible route to travel from Algiers to Malta in the absence of direct flights, and the routing does not take longer than Algiers-Rome-Malta. If there is doubt about the use of the previous visa, the consulate should conduct an interview, but refusing a

visa on the sole basis of entry/exit stamps of the previous trip is unreasonable.

In case a multiple-entry visa with long validity has not been used at all during the initially planned travel period (as indicated at the time of application by the intended dates of arrival and departure of the first/next trip) and was then used – towards the end of its validity period – for a short trip to a Member State other than the one initially indicated as the main destination, this cannot be considered abuse unless there are clear indications of fraudulent behaviour of the visa holder (e.g. 'visa shopping').

Example: *A Kazakh well-known bona fide regular traveller to Slovakia is granted a one-year MEV and does not use it for the first 10 months. Then the person takes a 5-day trip by air to Norway. On the next application, the consulate concludes there was abuse and refuses the visa, without further investigations or conducting an interview.*

If there is doubt about the use of the previous visa, the consulate should conduct an interview, but refusing a visa on the sole basis of lack of use of a previous visa is unreasonable.

Example: *A well-known Congolese human rights defender is granted a two-year MEV to travel to Belgium, where she plans to attend a hearing. However, she only uses her MEV for a trip to Spain towards the end of its validity period. For this reason, she is called for an interview at the next application.*

The applicant explains that during the first 18 months, she concentrated on her work in DR Congo, as the political climate in the country was favourable and the initially planned hearing at the European Parliament was cancelled. The later trip to Spain enabled her to participate in training for human rights defenders, for which she submitted proof. The Belgian consulate may conclude that there was no abuse and issue her a 5-year MEV.

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

As regards the specific rules relating to applicants who are family members of EU/EEA citizens, of Swiss citizens and of UK nationals who are beneficiaries of the EU-UK Withdrawal Agreement[46] (Part III of this Handbook).

Specific aspects when assessing the following cases are described below:

– airport transit visas (point 6.14.);

– minors (point 6.15.).

[46] For Iceland, Liechtenstein and Norway, the Separation Agreement between the UK and the EEA EFTA countries (Iceland, Liechtenstein, Norway) applies. For Switzerland, the UK-Switzerland Agreement on citizens' rights applies.

6.2 Creation of an application file and consultation of VIS

When creating the application file, the consulate shall consult VIS to check the visa applicant's "history" which may have been recorded. When the applicant is positively identified in the VIS, the consulate should link the new application to the most recent previous application file.

The reliability of the consultation depends on the quality of the personal data entered. Entering incorrect or incomplete personal data could result in not being able to correctly identify a person in VIS and failure to link the application to previous applications.

The search in VIS should not be conducted as an exact search, but as a "fuzzy" search, allowing to identify the person even in case of minor differences (e.g. in transliteration or spelling of the name).

Since 28 June 2024, the uniform application form contains an additional option ("Other") for the sex of the applicant (field 8). This option should be selected whenever the applicant's travel document indicates a third gender. In the VIS, this should be indicated with the code 0003.01. In such cases, the consulate should also be aware that the person may have been recorded previously in the VIS with a different sex.

The consulate should also be aware that if a visa applicant is not recorded in VIS, this does not necessarily mean that they never applied for a visa, but only that the previous application was lodged more than five years earlier, meaning that the file is no longer stored in VIS.

Recommended best practice in cases where the applicant has only one name

In cases where the applicant has only one name (that serves both as a first name and as a surname), this name should be entered in the VIS in the data field 'surname', and the entry 'not applicable' should be entered field 'first name(s)'. This also applies if an applicant has several names that are not distinguished between first name and surname in the travel document. This ensures that data is entered in the VIS in a uniform way and prevents misidentifications.

Example: A national of Burma named Thant applies for a short-stay visa. In the VIS, the consulate enters 'Thant' in the surname data field, while entering 'not applicable' in the first name(s) field.

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

Recommended best practice

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

6.3 The authenticity and reliability of documents and statements

When examining the application, the consulate must take into account the authenticity and reliability of the documents presented and of the applicant's statements in an interview (if carried out), or in writing. The level of reliability of documents depends on the local circumstances and may therefore vary from one country to another and from one type of document to another. Within local Schengen cooperation consulates should share information and establish harmonised practices.

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

Examples:

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

6.4 The travel document

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

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

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

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

Given that verification of whether a travel document is false, counterfeit or forged can be both time consuming and difficult, it is recommended that document security experts be consulted and that up-to-date knowledge is ensured through training.

Joint deployment of documents security experts to high-risk countries and/or depending on the capacity, making available of such officers deployed by one Member States to the others is a good practice.

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

Such documents should never be returned to the holder but preferably the offence should be reported and the document transmitted to the authorities of the issuing third country. However, in case the third country concerned punishes such an offence in a disproportionate manner, the consulate should not report the case to the authorities of the third country concerned.

6.5 The purpose of the intended stay

The consulate shall verify the purpose(s) and the legality of the intended stay and the applicant's justification of the purpose of the intended stay and its legality. A large number of invitations from the same host/referee could indicate that the real purpose of travel is illegal immigration and/or employment.

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

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

- *an applicant claims to travel to an industrial area, staying in a cheap hotel, for the purpose of tourism;*

- *an applicant claims to visit a professional event on dates that do not correspond to the actual dates of the event;*
- *an applicant claims that the purpose of the trip is to visit a friend, but it turns out that the person concerned is absent during the period of the intended visit;*
- *a trader in jewellery claims to have been invited to attend a medical conference;*
- *a third-country national indicates that the purpose of his trip is to participate in a congress; he presents an invitation but no documentation showing that he practices a profession or holds a qualification relating to the subject of the congress;*
- *an applicant claims that the purpose of the intended trip is short-term employment but the documents submitted indicate that the intended stay would exceed 90 days per period of 180 days.*

– whether the purpose of travel is justified: an application for a visa for medical treatment where local treatment is available may hide an intention to abuse social welfare in the Member State.

  However, that may not always be the case: the applicant may wish to receive medical treatment where his/her family members reside; or wish to be treated by a doctor who has treated him previously; or seek medical care that is perceived as of better quality than in his/her country of residence.

  Consulates must in each case verify that the person has the financial capacity to pay the medical bills, that the medical procedure is already pre-paid, or that the applicant has comprehensive private insurance that will pay the bill irrespective of the type of treatment.

– whether the purpose of travel follows a pattern for illegal employment or immigration: individual applicants coming from the same region and always booking at the same hotel could be suspicious;

– whether the purpose is against the national interest of all Member States or of a specific Member State for reasons of security, public order or external relations.

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

– business meeting followed by a weekend of tourism;

– paid activity combined with private visit to friends;

– training followed by a religious pilgrimage.

6.6 The conditions of the intended stay

The applicant's justification for the conditions of the intended stay shall be verified:

– accommodation during the stay or possession of sufficient means to cover the accommodation;

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

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

The following should be checked:

– if no transport ticket has been presented, it should be checked whether the applicant possesses sufficient financial means to acquire a transport ticket;

– if the applicant wishes to leave the territory of the Member States by a private means of transport, the consulate may request proof of such private means of transport (registration, insurance) and the driver's or pilot's licence. The consulate may also request documents regarding the state of that means of transport;

– if the applicant has presented an onward ticket, it should be checked whether he or she is in possession of a visa or any other document allowing the entry into the intended country of destination.

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

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

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

– the length of the intended stay;

– the purpose of the intended journey;

– the cost of living as notified by Member States in accordance with Annex 18. The consulate should accept as sufficient financial resources below that estimate if the applicant benefits from financial support or free services (or at a reduced price) during the period spent within the territory of the Member States;

– proof of sponsorship and/or private accommodation;

– a reliable and credible certificate confirming financial support of a legal resident within the territory of the Member States;

– a prepaid receipt from a reliable travel agency.

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

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

– luxury tourism;

– medical treatment in order to cover the cost of such treatment calculated on the basis of a realistic estimate made by the host medical entity, unless such cost is covered by a reliable entity;

– study in order to cover the cost of the school fees, unless covered by a reliable sponsorship or proof that such costs have been prepaid.

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

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

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

6.7 The security risk and the public health risk

Consulates shall verify whether the applicant is a person for whom an alert has been issued in the Schengen Information System (SIS) for the purpose of refusing entry. Furthermore, visa applicants may be subject to alerts on return, which may or may not be associated with an entry ban[47]. In addition, consulates should verify whether the applicant is considered to be a threat to public policy/internal security, public health or to the international relations of any of the Member States, in particular where an alert has been issued in Member States' national databases for the purpose of refusing entry on the same grounds. The outcome of these checks/consultations must be taken into account.

To check the security risk, the consulate shall:

– consult SIS to check whether the visa applicant has been subject to an alert. In case of a ‘hit’, it shall analyse the results of the SIS consultation to verify whether the person is subject to an alert for the purpose of refusing entry and/or a return alert, and to avoid false identification resulting from identical names;

– launch the prior consultation of other Member States, if applicable;

– consult national database in accordance with its national legislation;

[47] Further recommendations on entry bans and return alerts are available in the SIS Handbook (Commission Recommendation C(2023) 2152 establishing a Practical Handbook to be used by Member States' competent authorities and SIRENE Bureaux when carrying out tasks related to the Schengen Information System).

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

Regarding threats to public health, any disease with epidemic potential as defined by the International Health Regulations (IHR) of the World Health Organisation (WHO) and other infectious diseases or contagious parasitic diseases if they are subject of protection provisions applying to nationals of Member States may be regarded as constituting such a threat. In such circumstances, consulates shall receive instructions from their central authorities. "Public health risk" is assessed through the Community Network set up under Regulation (EU) 2022/2371[48] and its Early Warning and Response System (EWRS) and the ECDC, set up by Regulation (EC) No 851/2004 establishing a European centre for disease prevention and control (ecdc.europa.eu).

Additional requirements to mitigate public health risks (e.g. submission of vaccination certificate) should only be requested from applicants if all consulates in a given location follow the same practice.

6.8 Use of VIS Mail

Legal basis: Article 16 of Regulation (EC) No 767/2008 (VIS Regulation)

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

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

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

VIS Mail shall be used for:

- consultations based on Article 22 of the Visa Code (prior consultation);
- notification of issuance of a visa with limited territorial validity (Article 25(4) of the Visa Code);
- ex-post notifications of issued visas, according to Article 31(4) of the Visa Code.

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

- notification of grounds for objection in prior consultation based on Article 22 of the Visa Code (see transitional guidelines below);

[48] Regulation (EU) 2022/2371 of the European Parliament and of the Council of 23 November 2022 on serious cross-border threats to health and repealing Decision No 1082/2013/EU, OJ L 314, 6.12.2022, p. 26–63, ELI: http://data.europa.eu/eli/reg/2022/2371/oj

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

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

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

Transitional guidelines for negative replies in prior consultation

Until VIS Mail is updated to reflect the division of the prior consultation into three sub-categories (threat to public policy/internal security; threat to public health; threat to international relations), the consulted Member State should signal the precise reason for the negative reply through the following means. The central authorities should – in parallel to the VIS Mail 2 message "refusal" usually used for prior consultation – send a VIS Mail 1 (NSConsularCooperationInformation) message, which contains the code of the precise reason in its "MessageText" field. This message should in principle be sent from the central authorities of the consulted Member State dealing with the prior consultation request to the authority (consulate) of the consulting Member State that created the application in VIS. The codes to be used are the following:

"Refusal ground 7 (security*)"

"Refusal ground 8 (health)"

"Refusal ground 9 (international relations)"

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

*) In case of a negative response by Austria, Estonia, Germany, Slovenia or Switzerland, ground 7 applies. No additional messages will be sent.

For details on the functioning of the VIS Mail and the VIS Mail specifications, see Annex to *Commission Implementing Decision C(2015) 5561 final on the technical specifications for the VIS Mail Communication Mechanism for the purposes of Regulation (EC) No 767/2008 of the European Parliament and of the Council and repealing Commission Decision 2009/377/EC and Commission Implementing Decision C(2012) 1301, which* provides a comprehensive series of details.

6.9 Travel Medical Insurance (TMI)

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

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

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

If the length of the intended stay applied for exceeds the validity of the TMI, the consulate shall either limit the length of stay granted to the period covered by the TMI or invite the applicant to acquire a TMI that covers the entire period of the intended stay. The TMI shall not be required to cover the entire validity of a single-entry visa, i.e. only the period of effective stay should be covered and not the 15 days 'period of grace'.

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

6.10 Verification of the length of previous and intended stays

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

Examples of short stays before or following after a long stay (point 8.3):

A person who has stayed in Spain for six months on the basis of a national long-stay visa or a residence permit may be issued a uniform or limited territorial validity (LTV) visa, the validity of which starts immediately after the expiry of the long-stay visa or the residence

permit without the person having to exit the Schengen area.

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

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

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

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

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

Examples of calculation of stay:

1) A person holding a multiple-entry visa for 1 year (18 April 2024 to 17 April 2025) enters for the first time on 19 April 2024 and stays for 3 days. That person then enters again on 18 June 2024 and stays for 86 days. What is the situation on specific dates? When will this person be allowed to enter again?

On 11 September 2024: Over the last 180 days (16 March 2024 to 11 September 2024) the person had stayed 3 days (19 April 2024 to 21 April 2024) plus 86 days (18 June 2024 to 11 September 2024) = 89 days = no overstay. The person may still stay for up to 1 day.

As of 16 October 2024: The person might enter for a stay of 4 days (on 16 October 2024 the stay on 19 April 2024 becomes irrelevant (outside the 180-day period); on 17 October 2024 the stay on 20 April 2024 becomes irrelevant (outside the 180-day period; etc.).

As of 15 December 2024: The person might enter for 90 days (on 15 December 2024, the stay on 18 June 2024 becomes irrelevant (outside the 180-day period); on 16 December 2024, the stay on 19 June 2024 becomes irrelevant, etc.).

2) A third-country national has been granted a multiple-entry visa for 2 years (11 August 2024 to 10 August 2026) allowing for a stay of 90 days per 180 days. The visa holder enters on 14 August 2024 and leaves on 30 August 2024 (17 days). On 15 December 2024 the person enters again and leaves only on 22 June 2025. What is the situation on specific dates? When should this person have left?

On 1 February 2025: Over the last 180 days (6 August 2024 to 1 February 2025) the person had stayed 17 days (14 August 2024 to 30 August 2024) plus 49 days (15 December 2024 to 1 February 2025) = 66 days = no overstay.

On 25 February 2025: Over the last 180 days (30 August 2024 to 25 February 2025) the person had stayed 1 day (30 August 2024) plus 73 days (15 December 2024 to 25 February 2025) = 74 days = no overstay.

On 14 March 2025: Over the last 180 days (16 September 2024 to 14 March 2025) the person had stayed 90 days (15 December 2024 to 14 March 2025) $\Rightarrow$ 14 March 2025 = last day of authorised stay.

3) A third country national has been granted a multiple-entry visa for 1 year (1 January 2024 to 31 December 2024) allowing for a stay of 90 days per 180 days. The visa holder enters on 1 January 2024 and leaves on 10 January 2024 (10 days), then enters and leaves respectively on 1 March 2024 and 30 March 2024 (30 days) and finally enters and leaves on 1 May 2024 and 9 June 2024 (40 days). What is the situation on specific dates? For how long would the person be allowed to enter again (consecutive stay)?

On 19 June 2024: The person might enter for a consecutive 20 days maximum: 10 days 'leftover' from the authorised 90 days (19 June to 28 June), plus an additional 10 days since on 29 June 2024 the stay on 1 January 2024 becomes irrelevant and on 30 June 2024 the stay on 2 January 2024 becomes irrelevant, etc. (outside the 180-day period).

On 7 August 2024: The person can still enter for a consecutive 20 days maximum as explained above, because the 30-day stay that started on 1 March 2024 will only start becoming irrelevant on 28 August (since its corresponding 180-day reference period runs from 2 March 2024). On 26 August, therefore, the person should leave the Schengen area as on that day he will reach the 90 days within the 180-day reference period (which runs from 29 February).

On 8 August 2024: The person might enter for a consecutive 50 days maximum (10 days 'leftover' from the authorised 90 days, plus an additional 10 days since on 29 June 2024 the stay that started on 1 January 2024 starts becoming irrelevant, plus 30 days, since on 28 August 2024, the stay that started on 1 March 2024 starts becoming irrelevant (out of the 180-day reference period which runs from 2 March 2024 in this case).

On 8 September 2024: The person might enter for a consecutive 90 days maximum. 90 days consecutive absence (between 10 June 2024 and 7 September 2024) always leads to a new stay for up to 90 days.

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

Member States should use the 'length of stay calculator': https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/border-crossing/short-stay-visa-calculator_en.

6.11 Additional documents

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

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

Examples:

- an employment contract presented by an applicant is due to expire shortly; the consulate requests the applicant to provide information regarding his/her future employment/economic situation;
- the signature on an application from a minor is suspicious and therefore the consulate checks the signer's identity by comparing it with the signature on other official documents;
- in the event of the death of a relative in a Member State: a death certificate;
- in the event of a wedding in a Member State: a marriage announcement.

6.12 When should an applicant be called for an interview?

The consulate may, in justified cases, decide to carry out an interview with the applicant during the examination of his/her application.

When the examination of the visa application on the basis of the information and the documentation available does not allow a final decision to be taken to either issue a visa or refuse the application, the consulate must contact the applicant by telephone or invite him or her for a personal interview at the consulate. The interview may also be carried out using other forms of communication (e.g. video call), but adequate safeguards should be taken to prevent identity fraud. To avoid a disproportionate burden for the applicant, particularly where the applicants resides at a considerable distance from the consulate, video calls may be carried out from the premises of external service providers or of honorary consuls. However, the interview must always be conducted by consular staff.

The need for an interview should be determined by the consulate on the basis of the assessment of, among other things, general migratory risk in a given location. An interview – be it via a phone call or in person - is a good way to obtain further information from the

applicant and to ascertain the reliability of the information relating to the application, especially in locations where the number of fake/false documents is high. The option of conducting an interview should not be discarded solely with the aim of minimising processing times, since the information gathered through an interview can provide a solid basis for decisions in more difficult cases.

It should be avoided that interviews are systematically carried out with certain categories of applicants after the lodging of the application at an external service provider.

Recommended best practice
in cases where there is a need for systematic in-depth scrutiny of applications from certain categories of applicants (e.g. first-time travellers)

A consular staff member may be present at the external service provider to conduct such interviews directly at the submission stage.

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

Consulates shall assess:

– the risk of illegal immigration by the applicant to the territory of Member States (i.e. the applicant using travel purposes such as tourism, business, study or family visits as a pretext for permanent illegal settlement in the territory of the Member States) and

– whether the applicant intends to leave the territory of the Member States before the expiry of the visa applied for.

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

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

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

– family links or other personal ties in the country of residence;

– family links or other personal ties in the Member States;

– marital status;

– employment situation (salary level, if employed);

– regularity of income (employment, self-employment, pension, revenue from investment, etc.) of the applicant or of his/her spouse, children or dependants;

– the level of income;

– the status in the country of residence (e.g. elected to public office, NGO representative; specific professions: lawyer, medical doctor, university professor);

– the possession of a house/real estate.

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

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

The socio-economic situation may also present diverging aspects: an unemployed applicant may benefit from a very stable financial situation and a well-paid applicant might consider illegal immigration for personal reasons and all elements should be taken into consideration to ensure an objective assessment. In many cases these aspects only become apparent after an interview of the applicant.

Other aspects to be verified:

– previous illegal stays in the Member States;

– previous abuse of social welfare in the Member States;

– a succession of different visa applications (for short stay or long stay visas) presented for different unrelated purposes;

– credibility of the inviting person or organisation when the invitation letter is presented. This assessment may take into account the purpose of the trip (e.g., private visit, business) and the guarantees provided by the inviting person or organisation (e.g., information from trusted civil society organisations in case of human rights defenders, journalists and dissidents).

6.14 Application for an airport transit visa (ATV)

Legal basis: Visa Code, Article 21(6)

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

– check the travel document (point 6.4);

– verify whether an ATV is appropriate for the planned itinerary, as the applicant may need a visa allowing for entry into the territory of the Member States (point 1.4.);

– verify the itinerary and the authorisation to enter the country of final destination and assess the risk of illegal immigration while in transit (point 5.2.4);

– check the points of departure and destination of the third-country national and the coherence of the intended itinerary and airport transit: making a long and/or

expensive detour to transit through an airport of a Member State appears suspicious, although in some cases it may have a logical explanation;

– verify the proof of the onward journey to the final destination.

6.15 Minors

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

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

– the person applying for the visa on his/her behalf is the parent or legal guardian;

– if the minor is to travel alone or with only one parent, the consent of the person(s) exercising parental authority or legal guardian is provided, irrespective of the age of majority in the country of origin or residence.

– the minor has not been unlawfully removed from the care of the person legally exercising parental custody over him: in case of suspicion of such unlawful removal or doubt about the consent of the person exercising the parental authority, the consulate should conduct all necessary investigations in order to prevent the abduction or unlawful removal of the minor;

– there is no ground for suspecting child trafficking or child abuse;

– the purpose of the journey is not irregular immigration into the territory of the Member States.

6.16 Keeping track of decision making

Recommended best practice

Results of examinations, background checks and interviews should be well documented so that the reasons for the decision can easily be retrieved. These records should ideally be stored in the national IT system in the form of additional comments on the decision making screen and not only in the archived paper file.

6.17 Reporting back procedures (‘return control’)

There are no EU rules on ‘reporting back procedures’, i.e. requesting specific categories of travellers to report back to the consulate when returning from the stay for which a visa has been issued. However, the use of such practices should be limited and well-founded and they should not serve to mitigate migratory risk in cases of doubt. Consulates should exchange information on their practices with regard to ‘return control’ in local Schengen cooperation with the aim of avoiding wide discrepancies in practice.

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

7. DECIDING ON A VISA APPLICATION

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

Legal basis: Visa Code, Article 23

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

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

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

While processing a visa application, the consulate should not systematically let this deadline expire but take account of duly justified urgency claimed by the applicant (humanitarian grounds, for instance in the case of dissidents at actual temporary risk of harm) in which case the decision should be taken without delay. Urgency should be distinguished from negligent late submission of the application.

In individual cases, where further scrutiny of the application is necessary, the deadline may be extended up to a maximum of 45 calendar days after the application has been considered admissible:

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

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

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

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

Further scrutiny may be necessary in the following cases:

- *if the documents establishing the civil status of the applicant need to be verified by the authorities in his/her country of residence or origin and the application was not*

lodged in the country issuing the civil status documents;

– *if it is necessary to seek further information from a sponsor in the Member State about his/her background and relationship with the applicant.*

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

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

As regards the specific rules relating to applicants who are non-EU family members of EU citizens, of Swiss citizens and of UK nationals who are beneficiaries of the EU-UK Withdrawal Agreement[49] (Part III of this Handbook).

As regards the specific rules applying to categories of persons covered by Visa Facilitation Agreements, see the respective Guidelines (Part I, point 6 of this Handbook).

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

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

8. TYPES OF VISA TO BE ISSUED

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

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

– **period of validity**: the period during which the visa holder may use the issued visa to enter and exit the territory of the Member States while respecting the period of authorised stay. The maximum validity of a short stay visa is five years;

– **period of authorised stay**: the effective number of days that the visa holder may stay in the territory of the Member States during the period of validity of the visa. The period of authorised stay may be from 1 up to 90 days;

– **number of entries**: refers to the number of visits that may be carried out during the period of validity of the visa while respecting the length of the authorised stay:

Examples:

[49] For Iceland, Liechtenstein and Norway, the Separation Agreement between the UK and the EEA EFTA countries (Iceland, Liechtenstein, Norway) applies. For Switzerland, the UK-Switzerland Agreement on Citizens' rights applies.

- one entry: a visa is valid from 1 January – 30 March and allows for one entry. During that period the holder is allowed to travel once to the territory of the Member States; once he has left the territory of the Member States, he is not entitled to re-enter even if the total number of authorised days of stay has not been used.
- two entries: a visa is valid from 1 January – 30 June, and allows for two entries. During that period the holder may be authorised to stay for a total of 90 days divided into two separate trips.
- multiple entries: a visa is valid from 1 January – 31 December and allows for multiple entries. During this period the holder is allowed to stay up to 90 days in any 180-day period. The stay can be divided into as many separate trips as wished by the visa holder.

- **territorial validity:** the territorial validity of a visa may vary:
  - a uniform visa allows the holder to travel in the entire territory of the Member States;
  - a visa with limited territorial validity allows the holder to travel only in the Member State(s) for which the visa is valid;
  - an airport transit visa only allows the holder to transit through the international transit areas of airports situated on the territory of the Member States, but not to enter into this territory.

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

A uniform visa

Legal basis: Visa Code, Article 24

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

8.2 Period of validity

The period of validity of a visa cannot exceed 5 years. The Visa Code does not authorise Member States' central authorities to unilaterally establish internal rules that limit the maximum visa validity to less than 5 years.

The validity of the visa issued cannot, however, go beyond the validity of the travel document which must extend three months beyond the intended departure from the territory of the Member States and thus the period of validity of the issued visa should not go beyond that date (i.e. three months before the expiry of the travel document) either (point 3.1.1).

The specific rules on the validity period of multiple-entry visas issued to repeat applicants are explained in point 8.4.3.

8.2.1 Period of grace

An additional 'period of grace' of 15 days should be included in the period of validity of one entry and two entry visas and, multiple entry visas with a validity of less than 90 days to allow for a certain room for manoeuvre for the visa holder. The travel medical insurance does not have to cover the 'period of grace'.

Example: *an Egyptian national is travelling to Italy to attend a wedding that takes place on 25 June and wishes to spend additional time for the purpose of tourism after the wedding celebrations. She presents an airline ticket reservation indicating intended arrival on 22 June and departure on 6 July and hotel reservations for tourism purposes cover the period 27 June – 5 July.*

The period of validity of the visa issued should be from 22 June – 21 July (30 days): date of arrival + duration of stay + 15 days of 'period of grace'.

Example: *a Chinese national wishes to travel to Svalbard (Spitzbergen) for one week. She presents an airline ticket reservation indicating arrival at Oslo Airport (Norway), transfer, and departure to Longyearbyen via Tromsø, where border control will be carried out. As the applicant has to travel the same way back to China, she applies for a visa with two entries.*

This person should be granted a visa allowing for two entries and a 'period of grace": date of arrival + duration of stay + 15 days of 'period of grace'

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

Example*: A national of Iran who works for the city of Tehran is travelling to Sweden to participate in a one-week training course on urban planning. For reasons of public policy and international relations,* the consulate decides not to grant a 15-day period of grace and issues a visa for the exact duration of the stay.

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

8.3 Period of stay

The period of authorised stay for one or two entry visas should, in principle, correspond to the intended purpose of stay, while respecting the general rules in relation to the length of stay. This, however, does not apply to the issuing of multiple entry visas with long validity to frequent and regular travellers.

Recommended best practice

Consulates should consider granting a period of stay with a few days more than the intended stay in order to allow the visa holder to slightly prolong the stay in the Schengen area in case of unforeseen circumstances (e.g. flight cancellations or sudden illness) and to avoid the need

for extension of the visa. The consulate can decide to add a few days to the authorised period of stay even if the travel medical insurance does not cover those extra days.

Previous stays within the territory of a Member State on the basis of a national long-stay visa or a residence permit have no influence on the stays allowed by a uniform visa or a visa with limited territorial validity.

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

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

Holders of a valid MEV may be issued a new multiple-entry visa with a long validity provided that the validity of the new visa starts at the expiry of the previous one and the existing valid visa should not be revoked. Responsibility for complying with the 90/180-day rule lies with the visa holder.

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

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

A visa is no longer valid when the total number of exits made by the visa holder equals the number of authorised entries, even if the visa holder has not used up the number of days authorised by the visa.

Example: The holder of a single-entry visa allowing for a stay of 10 days and valid for 25 days exits after a stay of 6 days (i.e. visa valid from 1 January to 26 January; period of the effective stay: 5 January – 10 January).

Even if all days of the authorised stay were not spent and the dates of overall validity have not passed, this visa is no longer valid.

***Example**: **Issuing short-stay visas after a long stay without leaving the territory of the Member States*[50]

An exchange student from Belize has been issued a long-stay visa for the whole duration of her studies in Portugal, expiring on 1 July. After her university term ends, she wishes to travel to Spain for one month, followed by shorter trips to Italy and Greece until 25 August.

She needs to apply for a short-stay visa at the competent Spanish consulate, with the validity period starting immediately upon the expiry of her long-stay visa. Since at the time of application she is resident in Portugal as a student, the Spanish consulate in Portugal should deal with the application.

8.4 Number of entries

A uniform visa may be issued for one, two or multiple entries. The applicant should indicate in the application form how many entries he wishes and the consulate examining the application decides on the number of entries to grant.

When a multiple-entry visa is issued, the period of validity of the travel document should be respected (point 3.1.1.).

8.4.1 One entry

If the applicant's purpose of travel is one particular event defined in time, only one entry should, in principle, be allowed. However, due account must be taken of the 'cascade' rules (point 8.4.3.1.).

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

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

8.4.2 Two entries

If the applicant's purpose of travel is one particular event defined in time, but during that visit there is a visit planned for instance to the United Kingdom or Ireland, the consulate should issue a two-entry visa.

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

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

[50] For further guidance, see C(2022) 7591 Annex to the Commission Recommendation establishing a common "Practical Handbook for Border Guards (Schengen Handbook)" to be used by Member States' competent authorities when carrying out the border control of persons and replacing Recommendation (C (2019) 7131 final), point 3.6, https://home-affairs.ec.europa.eu/system/files/2022-11/Practical%20handbook%20for%20border%20guards_en.pdf

***Example**: a Turkish national is travelling by bus from Istanbul (Türkiye) to London (United Kingdom) and back to Türkiye.*

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

***Example**: A Bolivian national is travelling from La Paz (Bolivia) to Larnaca (Cyprus) by plane via Madrid (Spain), where he will spend a day in each direction during the stopover.*

This person should be issued a visa allowing for two entries with a validity allowing for the transfer from Madrid to/from Larnaca.

8.4.3 Multiple entries

When a multiple-entry visa is issued with a period of validity between 180 days (6 months) and 5 years, the duration of authorised stay is always 90 days (per 180 day-period). Multiple-entry visas (MEVs) with a long(er) validity should be issued to frequent or regular travellers irrespective of travel purpose.

When assessing a visa applicant's 'travel history', account must be taken of previous visas issued by all Member States and not only those of the case handling Member State.

Visas allowing for multiple entries with a validity of less than 6 months should only be issued if the travel pattern of the applicant during the (short) validity period would not be covered by a visa for one or two entries. In such cases, if the applicant is considered to be *bona fide*, the consulate should also consider whether it could issue a multiple-entry visa valid for 6 months and a duration of authorised stay of 90 days.

8.4.3.1 'Cascade' system

Under the following circumstances a multiple-entry shall be issued ('cascade' system):

- an applicant has obtained and lawfully used three uniform* visas within the previous two years (counted from the date of lodging the fourth application). Provided that the travel document's validity allows for it, a multiple-entry visa valid for one year shall be issued;

- an applicant has obtained and lawfully used a previous multiple-entry uniform* visa valid for one year within the previous two years (counted from the date of lodging the current application). Provided that the travel document's validity allows for it, a multiple-entry visa valid for two years shall be issued;

- an applicant has obtained and lawfully used a previous multiple-entry uniform* visa valid for two years within the previous three years (counted from the date of lodging the current application). Provided that the travel document's validity allows for it, a multiple-entry visa valid for five years shall be issued; and

– by way of analogy, provided that an applicant has obtained and lawfully used a previous multiple-entry uniform* visa valid for five years within the previous six years, a multiple-entry visa valid for five years should be issued again if the travel document's validity allows for it.

*Account shall also be taken of visas with limited territorial validity, issued under Article 25(3) of the Visa Code solely because the travel document is not recognised by all Member States (point 8.5.3.). Airport transit visas or visas with limited territorial validity issued under Article 25(1) of the Visa Code shall not be considered.

Example: *A Tunisian bona fide national has lawfully travelled to the Schengen area three times in the last two years, on three single-entry visas respectively issued by the Belgian, Spanish and Italian consulates in Tunis within the previous two years. He now wishes to visit Czechia and his travel document is valid for the next four years.*

The Czech consulate should issue a multiple-entry visa with a validity of one year.

The conditions for issuing a multiple-entry visa with long validity are not cumulative. For example, an applicant who has obtained and lawfully used a multiple-entry visa valid for one year within the previous two years shall be issued a multiple-entry visa valid for two years, even if he did not hold three visas in an earlier two-year period.

On the basis of the content of this Chapter, Member States' consulates in any given location shall prepare the implementation of these general rules in order to take account of local circumstances and offer more (or less) generous 'cascades' for all or certain categories of applicants. The local implementation shall be adopted by the Commission after consultation of Visa Committee in accordance with the procedure with the procedure set out in the Visa Code (Article 24(2d)) and further described in the Handbook for the organisation of visa sections and local Schengen cooperation (Visa Code Handbook II, Part II, point 1.1). Implementing decisions establishing local 'cascades' for the issuing of multiple-entry visas[51] are legally binding on Member States.

Example: *An Omani national residing in Muscat wishes to travel to Sicily (Italy) where his family owns a property, and applies for a short-stay visa.*

Omani nationals residing and applying for a visa in Oman are subject to specific local rules on issuing multiple-entry visas ('cascade' system). Applicants should be issued a multiple-entry

[51] As of May 2024, the Commission has adopted Implementing Decisions establishing adapted rules on the issuing of multiple-entry visas in 8 specific third countries (Algeria, Bahrain, India, Iran, Kuwait, Oman, Qatar, and Saudi Arabia). See the list of implementing acts: https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/visa-policy/legal-documents-related-schengen-visas_en

visa for a validity of five years by the Italian consulate, even if they are first-time applicants (provided that the travel document's validity allows for it).

In individual cases, the validity period may be shortened where there is reasonable doubt that the entry conditions will be met for the entire period.

Such doubt should be linked to objective criteria that make it likely that the applicant will cease to fulfil the entry conditions at a certain point in future, because of a foreseeable change in personal/economic circumstances.

Examples:

- *A visa applicant is employed via a fixed-term work contract on a large-scale construction project that has an end date in three years. The consulate should consider limiting the validity of the visa to the duration of the employment.*

- *A third-country national has a fixed-term residence permit in the country of residence, which will expire in four years. The consulate should consider limiting the validity of the visa to the duration of the residence permit minus three months.*

8.4.3.2 Other categories of frequent and regular travellers

Multiple-entry visa with a long validity should also be issued to frequent and regular travellers that may not be eligible under the above 'cascade' system irrespective of travel purpose. This may, in particular, concern persons having proved their integrity and reliability through the lawful use of previous uniform visas or visas with limited territorial validity (issued in accordance with Article 25(3) of the Visa Code, point 8.5.3. of this Handbook) issued by any Member State, and who prove the need or justify their intention to travel frequently or regularly.

Therefore, particular regard should be made to persons travelling for the purpose of exercising their profession, such as:

– business persons;

Example: *A Chinese businessperson working in the tourism industry, who does not have the visa history required to qualify under the 'cascade' rules, wishes to travel to Croatia and attend an international business fair held in the country twice a year. He is employed on a permanent contract by a trusted company and demonstrates his intention to return to China after he attends the fairs.*

The Croatian consulate could consider issuing a multiple-entry visa with a validity covering at least the first year of trade fairs. If the businessperson reapplies after having lawfully used the one-year visa, a two-year visa should be issued according to the general 'cascade' rules.

– seafarers: for this particular category of persons unforeseeable changes (due to for instance weather conditions) of schedules of the ship on which the seafarer is to embark-on or disembark from.

Therefore, seafarers having proved their integrity and reliability, in particular the lawful use of previous uniform visas or visas with limited territorial validity and the holding of a corresponding work contract generally qualify as a category for the issuing of a multiple-entry visa with a longer period of validity. As for the period of validity, and taking into consideration that seafarers' work contracts last an average of 8 months and that they often have back-to-back contracts, the validity of the multiple-entry visa should at least be one year, if the seafarer has already proven his/her integrity and reliability by the correct use of previous visas.

Example: *An Indonesian seafarer who has been working for the industry for several years and who has proved his integrity and reliability by using previous visas correctly applies for a visa at the Italian Consulate in view of starting an 8-month contract onboard a ship leaving from Genova (Italy). At the end of the contract the seafarer will return briefly to Indonesia before starting a new contract on another ship that he will board in departing from Piraeus (Greece).*

A multiple entry visa with a long (at least a year) validity should be issued.

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

To allow the seafarer to disembark the ship back in a Member State port and reach an airport to travel back to India after the end of the contract, a visa with a sufficiently long validity should be issued to allow the seafarer to disembark at the end of his contract.

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

Example**:** *Doctors Without Borders invites a Bhutanese practitioner to participate in a series of conferences in several Member States as part of a 2-year fellowship program. The Bhutanese practitioner intends to fly to Amsterdam (The Netherlands) to reach Barcelona (Spain), where the operational centre responsible for the fellowship program is located and where the first conference will take place.*

The Spanish consulate should issue a multiple-entry visa with a validity of two years.

– human rights defenders[52] and/or dissidents that are supported by trusted inviting organisations may be treated as bona fide applicants and consulates may issue multiple-entry visas with long validity if the entry conditions are fulfilled.

Example: *A well-known human rights defender from Ethiopia regularly travels to the European Union to participate in conferences, meet relevant stakeholders and counterparts in European NGOs, and demonstrate her intention to return to Ethiopia before the expiry of the validity of the visa. The most frequented destination is Germany, but her first envisaged trip will be Sweden.*

As Germany is the most frequent Member State of destination, the German consulate should process the application and issue a multiple-entry visa with long-validity.

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

Multiple-entry visa with a long validity should also be issued to frequent and regular travellers who may not be eligible under the above 'cascade' system irrespective of travel purpose. This may, in particular, concern persons having proved their integrity and reliability through the lawful use of previous uniform visas or visas with limited territorial validity (issued in accordance with Article 25(3) of the Visa Code, point 8.5.3. of this Handbook) issued by any Member State. Particular regard should therefore also be paid to the following categories of travellers:

– persons travelling for the purpose of tourism;
– persons possessing real estate property in the territory of a Member State;
– family members of EU and Swiss citizens and family members of third-country nationals legally residing in Member States.

[52] The EU and its Member states define human rights defenders (HRD) in the spirit of the 'UN Declaration on Human Rights Defenders' as: *individuals, groups and organs of society that promote and protect universally recognized human rights and fundamental freedoms through peaceful means.Human rights defenders seek the promotion and protection of civil and political as well as the promotion, protection and realization of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. It is therefore in the core interest of the EU and its Member States to support their work and protect them.*See EU Guidelines on Human Rights Defenders and UN Declaration on Human Rights Defenders, and the Council Working Party on Human Rights' (COHOM) Guidance Note on the EU Guidelines on Human Rights Defenders (2020, COHOM, 9793/20).

As regards the specific rules applying to categories of persons covered by visa facilitation agreements concluded by the EU, see the respective guidelines (Part I, point 6 of this Handbook).

8.5 Visa with limited territorial validity

Legal basis: Visa Code, Article 25

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

If an applicant does not fulfil the entry conditions or if a Member State under the prior consultation procedure objects to the issuance of a visa, the application shall be refused. Nevertheless, the Visa Code contains derogatory provisions allowing for the issuing of a visa on humanitarian grounds, for reasons of national interest or because of international obligations (Article 25(1)), allowing for a visa with limited territorial validity to be exceptionally issued where the applicant demonstrates his or her intention to leave the territory of the Member States before the expiry of the visa. Therefore, the competent consulate may decide to issue such visas. This could be relevant, for instance, in case of visa applications lodged by dissidents, independent journalists, human rights defenders and representatives of civil society organisations and their close family members.

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

***Example:** A representative of a civil society organisation from the Central African Republic is invited by a well-known European NGO to participate in a training course on international humanitarian aid and crisis response in France. While she demonstrates her intention to return to the Central African Republic before the expiry of the visa, she is not in a position to demonstrate sufficient means of subsistence, However, the French consulate may decide to issue a visa for reasons of national interest, due to the nature of the training course and/or France's cooperation with the NGO.*

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

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

In this case a visa with limited territorial validity allowing for a stay of up to 90 days in

Estonia may be issued.

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

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

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

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

Example*: An Azerbaijani applicant (for which prior consultation is required) needs to travel urgently to Germany to visit a gravely ill relative, who will likely pass away shortly.*

The German consulate issues a visa with limited territorial validity on humanitarian grounds, since there is no time to carry out the necessary prior consultation of other Member States.

Example*: A well-known Pakistani human rights defender (for which prior consultation is required) and international prize nominee is urgently invited to attend a hearing at the European Parliament in Brussels (Belgium).*

The Belgian consulate in Islamabad decides to issue a visa with limited territorial validity for reasons of national interest, without prior consultation of Member States' central authorities.

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

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

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

If there is no direct flight to Vienna on the travel day and thus the visa holder must fly to Munich (Germany), the territorial validity of the visa should be limited to Germany and Austria. It is, however, necessary first to obtain Germany's consent to this.

Example*: A well-known Pakistani human rights defender (for which prior consultation is required) and international prize nominee is urgently invited to attend a hearing at the European Parliament in Brussels (Belgium). However, it is likely that she will be subsequently invited to attend further hearings in Strasbourg (France) in the following days.*

The Belgian consulate in Islamabad decided to issue a visa with territorial validity limited to Belgium and France, with the consent of France and without prior consultation of other Member States' central authorities.

Recommended best practice

When a Member State considers issuing a visa with limited territorial validity to a person who does not fulfil the entry conditions, or without carrying out prior consultation, and needs to obtain the consent of one or more other Member States to extend the validity of the visa to their territories, it is recommended to forward the request via VIS-Mail by means of the form set out in Annex 29.

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

Example*: A Russian national presents himself at the external border in Estonia, and applies for a visa in order to attend the funeral of a close relative.*

A visa may be issued exceptionally at the external border.

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

Example: *At Munich Airport (Germany) an Egyptian seafarer coming from Cairo presents himself at the entry control. The seafarer was recruited at short notice to replace another key member of staff on a ship. The seafarer is to sign on to a vessel in Marseille (France). Given*

the better flight connection, the shipping company has booked a flight from Cairo via Munich to Marseille. The vessel the seafarer is to sign on to transports high-quality parts of aircraft produced in Toulouse to be further processed by a company in Germany. The French authorities have notified the German authorities at Frankfurt Airport of the seafarer's arrival by means of the form set out in the operational instructions for issuing visas at the external border to seafarers (Annex 26).[53]

As the seafarer was recruited at short notice, he is able to prove that it was not possible for him to apply for a visa at the competent consulate in advance.

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

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

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

The visa with the limited territorial validity for Germany and France is issued on the basis of Article 25(1), point (a)(iii), and (2) of the Visa Code and France has given its consent to extending the validity by means of the form for exchanging information among Member States' authorities on seafarers (Annex 26)[54] *which already includes the required consent.*

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

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

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

[53] Commission Implementing Decision C(2020)64 final establishing the operational instructions for issuing visas at the external border to seafarers.

[54] Commisison Implementing Decision C(2020)64 final establishing the operational instructions for issuing visas at the external border to seafarers.

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

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

Recommended best practice

In cases where – despite the general rule that visas should not be issued at the border to third country nationals subject to prior consultation – it is decided to issue a visa with limited territorial validity at the border to a seafarer recruited with short notice, and where it would be necessary to obtain the consent of (an)other Member State(s) to extend the territorial validity of the LTV, the form set out in the operational instructions for issuing visas at the external border to seafarers (Annex 26)[55] should be considered as proof of such consent.

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

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

Such visas may be issued allowing for several entries, and they are taken into account when determining the length of validity of multiple-entry visas to be issued under the rules of Article 24 of the Visa Code (point 8.4.3.).

8.5.4 Airport Transit Visa (ATV)

Legal basis: Visa Code, Article 26

It is important to distinguish between transit through the international transit area of an airport (onward journey where the third country national subject to the ATV requirement does not leave the international transit area of the airport) and transit via the territory of a Member State albeit limited to an airport (onward journey where the third country national subject to the ATV requirement) leaves the international transit area of the airport). In the latter case the traveller enters the territory of the Member States and requires a uniform visa, not an airport transit visa.

[55] Commission Implementing Decision C(2020)64 final establishing the operational instructions for issuing visas at the external border to seafarers.

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

***Example**: A Nigerian national travels from Lagos (Nigeria) via Frankfurt (Germany) to London (UK).*

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

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

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

The flight between Brussels and Paris is an "intra-Schengen" flight and thus this person enters the area of the Member States in Brussels and the (Belgian) consulate should issue a uniform visa and not an airport transit visa.

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

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

8.5.7 Number of airport transits and period of validity

The number of airport transits (indicated in the "number of entries" field on the sticker) and the period of validity should correspond to the needs of the applicant according to the information provided, which in the case of a single airport transit means the date of the transit plus the 'period of grace' of 15 days.

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

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

***Example:** an Iranian national travels from Tehran (Iran) via Madrid (Spain) to Havana (Cuba) and returns to Tehran via Frankfurt (Germany).*

The competent Spanish consulate should issue an airport transit visa for two entries.

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

The "duration of visit" field on airport transit visas is filled in with '0'.

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

Legal basis: Visa Code, Article 31

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

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

When should this information be transmitted?

The information on an issued visa should be transmitted to the Member State having requested it without delay and before the visa holder will use the issued visa.

10. THE VISA STICKER

The uniform format for the visa sticker is established by Regulation (EC) No 1683/95 (Annex 19).

10.1 Filling in the visa sticker

Legal basis: Visa Code, Article 27

The visa sticker is filled in in accordance with Commission Implementing Decision establishing the operational instructions (Annex 20).[56] Examples of filled in visa stickers are set out in Annex 21.

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

Recommended best practice
in the case of visas issued to holders of passports of the Russian Federation issued in occupied territories or regions of Ukraine and breakaway territories of Georgia

[56] Commission Implementing Decision C(2020) 34 final establishing the operational instructions for filling in and affixing visa stickers.

In accordance with Decision (EU) 2022/2512 of the European Parliament and of the Council[57], travel documents of the Russian Federation issued in or to persons resident in regions or territories in Ukraine which are occupied by the Russian Federation or breakaway territories in Georgia are not to be accepted as valid travel documents for crossing the external borders and a visa is not to be affixed in them. However, in case one of the exceptions applies under Article 2 of Decision 2022/2512 and a visa is issued to holders of such recognised travel documents, it is recommended that Member States print a remark in the national 'comments' section of the visa sticker, in accordance with Article 27(2) of the Visa Code. This will alert border guards and other authorities to the fact that the visa was not issued erroneously in a non-accepted travel document.

It is recommended that Member States use the comment "Art. 2 Decision (EU) 2022/2512".

Recommended best practice in case of visas issued to non-EU family members of mobile EU citizens under Directive 2004/38/EC and of UK nationals who are beneficiaries of the EU-UK Withdrawal Agreement[58]

In accordance with Article 27(2) of the Visa Code, Member States should print a remark in the national 'comments' section of the visa sticker when issuing visas to non-EU family members of mobile EU citizens under Directive 2004/38/EC and of beneficiaries of the EU-UK Withdrawal Agreement. This practice would allow for clear identification of such visas at the border.

It is recommended that Member States use the comment "Directive 2004/38/EC" or "EU-UK WA", respectively.

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

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

Recommended best practice
in the case of technical force majeure preventing printing of visa stickers

In case the technical problems can be solved within a relatively short time, and if it does not

[57] Decision (EU) 2022/2512 of the European Parliament and of the Council of 14 December 2022 on the non-acceptance of travel documents of the Russian Federation issued in Ukraine and Georgia (OJ L 326, 21.12.2022, p.1, ELI: http://data.europa.eu/eli/dec/2022/2512/oj).

[58] This recommended best practice also applies in case of visas issued to family members of beneficiaries of the EU-Switzerland Agreement on the Free Movement of Persons (recommended comment: "EU-CH AFMP"). Furthermore, it is recommended that visas issued to joining family members of UK nationals who are beneficiaries of the Separation Agreement between the UK and the EEA EFTA countries (Iceland, Liechtenstein, Norway) or of the UK-Switzerland Agreement on Citizens' Rights are also marked.

disturb the travel plans of the applicant, it is preferable to postpone the issuing of the visa until the sticker can be printed rather than filling it in manually.

When a visa sticker is filled in manually, the relevant information should be entered into the VIS.

If the applicant holds a travel document with no expiry date, the field 'expiry date' in the VIS should be filled with a fictitious date 100 years after the date of issuing the travel document.

10.2 Affixing of the visa sticker

Legal basis: Visa Code, Article 29

The printed visa sticker shall be affixed to the travel document in accordance with the operational instructions (Annex 20).

Recommended best practice before affixing a visa sticker to the travel document

The issuing authority should verify that the information contained in the machine readable zone (MRZ) of the visa sticker and/or the 2D barcode corresponds to that of the application form and travel document of the applicant (visually and/or by scanning the barcode) before affixing the visa sticker to the travel document.

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

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

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

10.2.2 Affixing of stickers in passports covering several persons

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

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

10.2.3 Stamping and signature of the visa

If the issuing authorities stamp the affixed visa, the seal shall be placed in such a manner that it extends beyond the sticker onto the page of the travel document, without preventing the reading of the machine readable zone (MRZ). If the issuing authority signs the visa, the signature should be placed in the same manner.

10.3 Invalidation of filled in visa stickers

Legal basis: Visa Code, Article 28

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

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

With regard to the necessary actions to be taken in the VIS please see Annex 32.

Recommended best practice
in case of invalidation of a visa sticker after it has been affixed to the travel document

The security feature 'latent image effect' as well as the term 'visa' should be rendered unusable by using a sharp instrument.

11. REFUSAL OF A VISA

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

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

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

11.1 On which grounds should a visa be refused?

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

1. the applicant has presented a travel document which is false, counterfeit or forged;
2. justification for the purpose and conditions of the intended stay was not provided;
3. the applicant did not provide proof of sufficient means of subsistence, both for the duration of the intended stay and for the return to his country of origin or residence, or for the transit to a third country into which he is certain to be admitted;
4. the applicant does not provide proof that he is in a position to lawfully acquire sufficient means of subsistence, for the duration of the intended stay and for the return to his country of origin or residence, or for the transit to a third country into which he is certain to be admitted;
5. the applicant has already stayed for 90 days during the current 180-day period on the territory of the Member States on the basis of a uniform visa or a visa with limited territorial validity;

6. the applicant is a person for whom an alert has been issued in the SIS for the purpose of refusing entry*; in this case the Member State concerned shall be added;*
7. the applicant is considered to be a threat to public policy or internal security by one or more Member States;
8. the applicant is considered to be a threat to public health of one or more Member States;
9. the applicant is considered to be a threat to the international relations of one or more the Member States;
10. the information submitted regarding the justification for the purpose and conditions of the intended stay was not reliable;
11. there are reasonable doubts as to the reliability as regards ….. (*to be specified);*
12. there are reasonable doubts as to the reliability or as to the authenticity of the supporting documents submitted or as to the veracity of their contents;
13. there are reasonable doubts as to the applicant's intention to leave the territory of the Member States before the expiry of the visa; sufficient proof that the applicant has not been in a position to apply for a visa in advance, justifying the application for a visa at the border, is not provided;
14. the applicant does not provide justification for the purpose and conditions of the intended airport transit;
15. does not provide proof of holding adequate and valid travel medical insurance, where applicable.

If the visa is refused on the basis of refusal grounds 7, 8 or 9, the Member State(s) who objected to the issuing of the visa must be identified in the refusal form (Annex 25A).

Particular rules in relation to grounds for refusal of a visa apply to family members of EU/EEA citizens, of Swiss citizens and of UK nationals who are beneficiaries of the EU-UK Withdrawal Agreement[59] (Part III of this Handbook).

Transitional guidelines for negative replies in prior consultation

Until VIS Mail is updated to reflect the division of the prior consultation into three sub-categories (threat to public policy/internal security; threat to public health; threat to international relations), the consulted Member State should signal the precise reason for the negative reply by sending a parallel VIS Mail 1 (NSConsularCooperationInformation) message to the authority (consulate) that created the application in VIS, which contains the code of the precise reason in its "MessageText" field:

"Refusal ground 7 (security)"

"Refusal ground 8 (health)"

[59] Similar specific rules apply to family members who fall under the Separation Agreement between the UK and the EEA EFTA countries (Iceland, Liechtenstein, Norway) or the UK-Switzerland Agreement on Citizens' rights.

"Refusal ground 9 (international relations)" The consulate processing the application should select the corresponding refusal ground in the refusal form accordingly.*

* In case of a negative response by Austria, Estonia, Germany, Slovenia or Switzerland, ground 7 applies. No additional messages will be sent.

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

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

The decision to refuse a visa application, the refusal ground(s) on which it is based, including refusal grounds in prior consultation (threat to public policy/internal security; threat to public health; threat to international relations) as well as the Member State objecting to the issuing of a visa and the contact information of that Member State[60] (Annex 25B), shall be notified to the person concerned using the refusal form (Annex 25 to this Handbook and Annex VI to the Visa Code contain the standard refusal form; the adapted refusal form in Annex 25A to this Handbook must be used in case the refusal is based on an objection of another Member State in prior consultation).

A Member State objecting to the issuing of a visa on grounds of threat to public policy, internal security, public health or international relations should readily make the necessary information available to the Member State handling the visa application so as to ensure respect of the standard deadlines for taking decisions on visa applications.

The refusal form should be provided in the official language of the Member State that took the final decision and in another official language of the institutions of the Union, for example in English. Member States may choose to incorporate several languages in one form or to issue two forms. If the latter option is chosen and the Member State requires the person concerned to sign the reception of the form, it may choose only to have him/her sign one of the language versions (point 12).

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

Particular rules in relation to notification and reasoning of refusal of a visa apply to non-EU family members of EU citizens, of Swiss citizens and of UK nationals who are beneficiaries of the EU-UK Withdrawal Agreement (Part III of this Handbook).

Recommended best practice in relation to a request of information about a SIS alert
If a person requests information about the processing of his/her personal data in the SIS and about his/her access rights, the consular staff should provide the person with the contact information of the competent national authorities, including data protection authorities, where

[60] Judgment in Joined Cases C-225/19 and C-226/19 R.N.N.S. and K.A. v. Minister van Buitenlandse Zaken, ECLI:EU:C:2020:951, paragraph 57

he/she can exercise his/her rights.

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

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

11.3.1 Transitional guidelines regarding the actions to be carried out in VIS

Until the VIS is updated to reflect the new list of refusal grounds in Annex VI to the Visa Code, the old list of refusal grounds should be used in the VIS. The following correlation table presents the new refusal grounds in Annex VI and the corresponding 'old' refusal grounds to be selected in the VIS:

New refusal grounds as listed on refusal form (Visa Code, Annex VI)	**Old refusal grounds (to be selected in VIS)**
1	1
2	2
3, 4	3
5	4
6	5
7, 8, 9	6
10, 11, 12	8
13	9
14	10
15	2
16	7
17	11

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

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

When notifying the refusal to the applicant, complete information regarding the procedure to be followed in the event of an appeal should be given. It has to be ensured that the applicant is granted the right to an effective judicial remedy, as stemming from Article 47 of the European Charter of Fundamental Rights and as confirmed by case law[61]. The applicants must be informed of the possibility to seek review before a court.

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

Particular rules in relation to information on appeal procedures apply to non-EU family members of EU citizens, of Swiss citizens and of UK nationals who are beneficiaries of the EU-UK Withdrawal Agreement[62](Part III of this Handbook).

12. RETURN OF THE TRAVEL DOCUMENT

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

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

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

If the travel document is returned via an external service provider, this should be done in a way that does not reveal the decision to the service provider, even if the person concerned is required – under Member States' national law to countersign reception of the refusal form.

Recommended best practice
in case countersigning of the reception of the refusal form is required

Request the person concerned to countersign for receipt of the closed envelope**.**

Recommended best practice informing visa holders when returning the travel document

It is recommended that the information along these lines be given to visa holders:

INFORMATION TO VISA HOLDERS

You have been issued a visa for the territories of the Schengen States[63].

61 Judgment in Joined Cases C-225/19 and C-226/19 R.N.N.S. and K.A. v. Minister van Buitenlandse Zaken, ECLI:EU:C:2020:951, p.57

62 Similar specific rules apply to family members who fall under the Separation Agreement between the UK and the EEA EFTA countries (Iceland, Liechtenstein, Norway) or the UK-Switzerland Agreement on Citizens' rights.

As soon as you receive your short-stay visa, make sure that all the information it contains is correct.

Check the following:

- *Your passport has a passport number. This number is also indicated on the visa sticker. Make sure that these numbers are the same.*
- *You applied for your visa for a specific period or periods. Check that your air ticket corresponds with the entry and exit dates indicated on the visa sticker.*
- *Check that the number of entries you applied for (one, two, or multiple) corresponds with the number of entries indicated on your visa sticker.*
- *Check that your name is spelled correctly.*

Do this yourself in order to avoid any problems or extra costs arising when using your visa. If you think that the information on the visa is incorrect, tell the consulate or embassy **immediately,** so that any errors can be corrected.

How to read the visa sticker

DURATION OF STAY……DAYS indicates the number of days, you may stay in the Schengen area. The days should be counted from the date you enter the Schengen area (the entry stamp) to the date you exit the Schengen area (the exit stamp), i.e. both days included.

The period of time between "FROM …UNTIL" is usually longer than the number of days printed in the "DURATION OF STAY" field. The difference in period is meant to give you the flexibility to plan your entry into and exit from the Schengen area, but your stay in the Schengen area must never exceed the exact number of days in the "DURATION OF STAY …DAYS" field. No matter how many days you have stayed in the Schengen area, you must leave no later than the date printed in the "UNTIL" field."

Controls at the border

Your short-stay visa allows you to travel to […..] and usually to other Schengen States. But it does not automatically entitle you to enter the Schengen area. So you may have to provide certain information at the border or other controls. You may, for instance, have to provide information on your means of support, how long you intend to stay in […], and why you are visiting […]. In some cases, such checks may result in a refusal for the visa holder to enter […] or the Schengen area.

[63] Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, The Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland

It is therefore recommended that you carry with you copies of the documents which you presented when you applied for the visa (e.g. letters of invitation, travel confirmations, and other documents stating the purpose of your stay). This will help to make the border control procedure easier and avoid delays at the border.

NB: You must keep to the period of stay allowed by your visa. Misuse and overstay may result in you being expelled and banned from obtaining a new visa for a certain period of time.

13. FILING OF THE APPLICATION FILES

Legal basis: Visa Code, Article 37(3)

13.1 What should be kept in each file?

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

Each individual file should contain the application form, copies or originals of relevant supporting documents, a record of checks made (unless recorded electronically) and the reference number of the visa issued.

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

13.2 For how long should the files be kept?

Individual application files shall as a minimum be kept on paper or electronically for one year from the date of the final decision taken on the application. In case of an appeal, individual files should be kept until the end of that procedure, if longer than one year. Electronic files should be kept for the period of validity of the issued visa.

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

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

Member States should also define a retention policy for the data in their national IT systems. While there is no maximum limit defined by EU law, national data retention cannot be unlimited but must respect general data protection principles.

PART III: SPECIFIC RULES RELATING TO APPLICANTS WHO ARE FAMILY MEMBERS OF EU64 CITIZENS, OF SWISS CITIZENS OR OF UK NATIONALS WHO ARE EU-UK WITHDRAWAL AGREEMENT BENEFICIARIES

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

Operational instructions addressed to the consulates of Member States. These instructions do not apply to Switzerland.

Legal basis: Article 21 of the Treaty on the Functioning of the European Union and Directive 2004/38/EC; Visa Code, Article 1(2), points (a), (b) and (c); Article 14(3) of the EU-UK Withdrawal Agreement[65]

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

The right of free movement of EU citizens would not have any useful effect without accompanying measures guaranteeing that this right is also given to their families. Directive 2004/38/EC therefore extends the right to free movement to non-EU family members of EU citizens. The second subparagraph of Article 5(2) of that Directive provides that '*Member States shall grant [family members covered by this Directive] every facility to obtain the necessary visas. Such visas shall be issued free of charge as soon as possible and on the basis of an accelerated procedure.'*

Article 21 TFEU and Directive 2004/38/EC prevail over the Visa Code. They represent a *lex specialis* with regard to the Visa Code (Article 1(2), point (a), of the Visa Code), so the Visa Code fully applies where Directive 2004/38/EC does not provide an explicit rule but refers to general *'facilities'*[66, 67].

This means that the provisions of the Visa Code that would negatively impinge on the rights of non-EU family members of EU citizens specifically protected by Directive 2004/38/EC do not apply *(e.g. the requirement set by Article 12, point (c), of the Visa Code according to which a travel document should not have been issued more than 10 years prior to the visa application because it only requires the travel document to be valid).*

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

65 The operational instructions in this Part that concern the EU-UK Withdrawal Agreement only apply to the consulates of EU Member States. However, similar specific rules apply to family members who fall under the Separation Agreement between the UK and the EEA EFTA countries (Iceland, Liechtenstein, Norway) and who join the beneficiary of this agreement in the host state. Regarding Switzerland, see chapter 7 for specific operational instructions addressed to the consulates of Switzerland.

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

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

The above also applies regarding non-EU family members who fall under the EU-UK Withdrawal Agreement and seek to join the UK national Withdrawal Agreement beneficiary in the host State (point 1.2). Hence, Article 14(3) of the EU-UK Withdrawal Agreement prevails over the Visa Code, i.e. the provisions of the Visa Code that would negatively impinge on the rights of non-EU family members of UK nationals who are beneficiaries of the EU-UK Withdrawal Agreement do not apply.

This Part of the Handbook provides consulates and visa authorities with operational instructions on the particular rules relating to visa applicants who are non-EU family members of EU citizens or of UK nationals who are EU-UK Withdrawal Agreement beneficiaries, in accordance with Article 1(2), points (a), (b) and (c), of the Visa Code.

It aims to cover the most common situations but is not exhaustive. On the application of other aspects of Directive 2004/38/EC, see Commission Notice, Guidance on the right of free movement of EU citizens and their families (C(2023)8500 final)[68]. On the application of other citizens' rights provisions of the EU-UK Withdrawal Agreement, see Commission Guidance Note 2020/C 173/01[69].

This part is subdivided as follows:

Point 1: how to assess whether the Visa Code should be applied in full or whether the specific rules laid down in the Directive/ EU-UK Withdrawal Agreement apply.

Point 2: the specific rules on exemption from the visa requirement of non-EU nationals who are family members of EU citizens or of UK nationals who are EU-UK Withdrawal Agreement beneficiaries.

Point 3: the specific derogations from the general rules of the Visa Code that are to be applied when it is ascertained (under point 1) that the visa applicant falls under Directive 2004/38/EC or the EU-UK Withdrawal Agreement and that there is no exemption from the visa requirement (under point 2).

1. APPLICATION OF DIRECTIVE 2004/38/EC AND OF THE EU-UK WITHDRAWAL AGREEMENT TO VISA APPLICANTS

1.1 Does Directive 2004/38/EC apply to the visa applicant?

This point provides instructions for assessing whether the specific rules relating to visas laid down in Directive 2004/38/EC apply.

If any of the questions below are answered in the negative, the applicant is not entitled to the specific treatment under Directive 2004/38/EC *(*point 4.11).

If, on the contrary, the three questions are answered in the affirmative, it has been established that the specific rules laid down in Directive 2004/38/EC indeed apply to the visa applicant. Consequently, the guidelines in points 2 and 3 apply.

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

[68] Commission notice Notice, Guidance on the right of free movement of EU citizens and their families (C(2023)8500 final) (OJ C, C/2023/1392, 22.12.2023, ELI: http://data.europa.eu/eli/C/2023/1392/oj).:

[69] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0520(05)&from=EN

Non-EU nationals who are family members of EU citizens derive their rights under Directive 2004/38/EC from EU citizens, the holders of the primary status. In principle, those non-EU nationals do not enjoy any autonomous right to move and reside freely[70].

The very first test is therefore whether EU citizens find themselves in a situation covered by Directive 2004/38/EC.

In principle, Directive 2004/38/EC applies only to those EU citizens who travel to a Member State other than the Member State of their nationality or already reside there *(i.e. the EU citizen exercises or has already exercised his/her right of free movement)*.

Directive 2004/38/EC offers facilitations to:

- EU citizens wishing to leave one Member State to travel to another Member State *(Article 4(1))*;
- EU citizens entering the host Member State *(Article 5(1))*;
- EU citizens residing in the host Member State for a short time *(Article 6(1) – this includes tourist travel);*
- EU citizens settled in the host Member State *(Article 7(1))*; and
- EU citizens residing permanently in the host Member State *(Article 16(1))*; or
- frontier workers who pursue an activity in a Member State in which they do not reside.

EU citizens residing in the Member State of their own nationality do not normally benefit from the rights granted under Directive 2004/38/EC (as there is no element of free movement). There are several exceptions:

(a) Dual nationals – persons with dual nationality *(nationality of the Member State of residence and another Member State)* whether by birth or by naturalisation are covered by EU law on free movement of EU citizens provided they have exercised free movement and residence rights in the Member State of residence of which they hold the nationality, while also retaining their nationality of origin. As ruled by the Court of Justice in case C-165/16 *Lounes*[71], the rights of their non-EU family members are equivalent to those provided in Directive 2004/38/EC. For further information, see the Commission Guidance on the right of free movement of EU citizens and their families[67].

(b) in line with the case-law of the Court of Justice, the application of EU free movement law extends to the non-EU family members of EU citizens who return to their Member State of nationality after having resided in another Member State (the "returning nationals"). For further information, see the Commission Guidance on the right of free movement of EU citizens and their families[72].

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70 This is without prejudice to individual rights granted by EU law, in particular by the Schengen rules or by the Long-Term Residence Directive 2003/109/EC (Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44, ELI: http://data.europa.eu/eli/dir/2003/109/oj)).

71 Judgment of the Court of Justice in Case C-165/16, Toufik Lounes v Secretary of State for the Home Department, ECLI:EU:C:2017:862.

72 Commission notice Notice, Guidance on the right of free movement of EU citizens and their families (C(2023)8500 final) (OJ C, C/2023/1392, 22.12.2023, ELI: http://data.europa.eu/eli/C/2023/1392/oj).: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023XC01392

In such situations, Directive 2004/38/EC does not apply as such, but only *by analogy*. This means that the applicable rules should not be more strict than those provided for by Directive 2004/38/EC for granting a derived right of residence to a third-country national who is a family member of an EU citizen who has exercised his/her right of freedom of movement by settling in a Member State other than the Member State of which he or she is a national[73].

The Commission considers that the above rules in point (b) for returning nationals also apply to EU citizens and their non-EU family members who return to their Member State of nationality after having lived in the United Kingdom while EU law still applied in the UK, even where the return takes place after 31 December 2020. The Member State of return may check whether the EU citizen had fulfilled the residence conditions of EU law on the free movement of persons in the United Kingdom on 31 December 2020. The Member State of return may also check whether the family life that was created or strengthened in the United Kingdom still exists at the moment of return.

For further information, see the Commission Guidance on the right of free movement of EU citizens and their families[74].

Examples:

1) *French nationals residing in Cyprus travel to Italy – Directive 2004/38/EC applies.*
2) *Czech nationals living in the Czechia travel (or wishes to travel) to Sweden – Directive 2004/38/EC applies.*
3) *Hungarian nationals living in Bolivia travel to Poland – Directive 2004/38/EC applies.*
4) *Polish nationals living in Bolivia travel to Poland – Directive 2004/38/EC does not apply.*
5) *Austrian national residing in the United Kingdom since 2022 travels to Austria – Directive 2004/38/EC does not apply.*
6) *Latvian national having resided in Greece returns to Latvia – Directive 2004/38/EC applies by analogy.*
7) *Luxembourgish national having resided in the United Kingdom since 31 December 2020 or before returns to Luxembourg – Directive 2004/38/EC applies by analogy.*

<u>Question 2:</u> Does the visa applicant fall under the definition of 'family member'?

'Core' family members, irrespective of their nationality, have an automatic right of entry and residence in Member States other than that of the nationality of the EU citizen concerned. Their right of entry is regulated in Directive 2004/38/EC and the national transposition measures may restrict neither these rights, nor the scope of the term 'core' family members.

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

– the spouse[75];

[73] Judgment of the Court of Justice in case C-456/12, *O. v Minister voor Immigratie, Integratie en Asiel* and *Minister voor Immigratie, Integratie en Asiel v B.*, ECLI:EU:C:2014:135.

[74] Commission notice Notice, Guidance on the right of free movement of EU citizens and their families (C(2023)8500 final) (OJ C, C/2023/1392, 22.12.2023, ELI: http://data.europa.eu/eli/C/2023/1392/oj).: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023XC01392

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

In addition to persons defined in Article 2(2) of Directive 2004/38/EC, the Court of Justice ruled in case C-200/02[76] *Zhu and Chen* that the relevant provisions of Directive 2004/38/EC (including the rules for the issuance of visas and the visa exempting effect of residence cards) are applicable by analogy to non-EU nationals who are primary carers of minor EU citizens *(such parents are not dependent on the minor EU citizen, but the minor EU citizen is dependent on such parents)*.

Primary carer(s) of dependent EU citizens can also derive rights from Article 12(3) of Directive 2004/38/EC if the EU child resides and is enrolled at an educational establishment in the host Member State[77].

In such cases, the case-law clarified that minor EU citizens enjoy full free movement rights, despite the fact that they cannot decide for themselves where to reside or where to travel. Such decisions are taken by their parents/primary carers who have the rights of custody of the EU child. Account must always be taken of the best interests of the child, which should be a primary consideration, as required by the United Nations Convention on the Rights of the Child of 20 November 1989 and Article 24 of the Charter. This may justify in particular verification that free movement takes place consistently with applicable custody rules.

In order to maintain the unity of the family in a broad sense, Member States must also facilitate entry and residence of so-called 'extended' family members of EU citizens (for more details, see the Commission Notice, Guidance on the right of free movement of EU citizens and their families, C(2023) 8500 final[67]).

The following persons are defined in Article 3(2) of Directive 2004/38/EC as 'extended' family members:

- any other *(i.e. those not falling under Article 2(2) of Directive2004/38/EC)* family members who:
  - dependants;
  - members of the household of the EU citizen;
  - strictly require the personal care by the EU citizen on serious health grounds; or
- partners with whom the EU citizen has a durable relationship, duly attested.

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

76 Judgement of the Court of Justice in case C-200/02, Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department, ECLI:EU:C:2004:639.

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

Article 3(2) of Directive 2004/38/EC stipulates that 'extended' family members have the right to have their entry facilitated in accordance with national legislation. In contrast with 'core' family members, 'extended' family members do not have an automatic right of entry. Their status as "family members" under Directive 2004/38/EC – including as regards the right of entry *(and the rights related to an entry visa)*, depends on an assessment to be made by national authorities in accordance with national legislation. Member States' consulates should find detailed rules on this category of visa applicants in national legislation transposing Directive 2004/38/EC.

In order to maintain the unity of the family in a broad sense, the national legislation must provide for a careful examination of the relevant personal circumstances of the applicants concerned, taking into consideration their relationship with the EU citizen or any other circumstances, such as their financial or physical dependence, as indicated in Recital 6 of Directive 2004/38/EC. In accordance with Article 3(2) of the Directive, Member States have a certain degree of discretion in laying down criteria to be taken into account when deciding whether to grant the rights under the Directive to 'extended' family members. However, Member States do not enjoy unrestricted liberty in laying down such criteria, since these criteria need to be consistent with the normal meaning of the term 'facilitation'.

For further information on these issues, see the Commission Notice, Guidance on the right of free movement of EU citizens and their families, C(2023) 8500 final[78].

<u>Question 3:</u> Is the visa applicant accompanying or joining the EU citizen?

Article 3(1) of Directive 2004/38/EC stipulates that it applies only to those non-EU family members, as defined in Question 2, who accompany or join the EU citizens who travel to or reside in a Member State other than that of which they are a national. Directive 2004/38/EC does not make the rights of family members conditional upon them residing 'with' the EU citizen – they need to reside in *(or travel to)* a Member State in which the EU citizen resides *(or will travel to)*[79].

For further information, see the Commission Notice, Guidance on the right of free movement of EU citizens and their families[67] and point 4.7 below.

Examples where the family member <u>accompanies</u> (i.e. travels together with) an EU citizen:

- *French nationals living in Ireland travel together with Pakistani spouse to Italy – Directive 2004/38/EC applies.*
- *Czech nationals living in Czechia travel together with Russian spouse to Sweden – Directive 2004/38/EC applies.*
- *Slovak nationals living in Cyprus travel together with Burmese spouse to Slovakia for a visit – Directive 2004/38/EC applies for the spouse.*
- *Spanish national living in Indonesia travels with Afghan spouse to Hungary – Directive 2004/38/EC applies.*

[78] Commission notice Notice, Guidance on the right of free movement of EU citizens and their families (C(2023)8500 final) (OJ C, C/2023/1392, 22.12.2023, ELI: http://data.europa.eu/eli/C/2023/1392/oj).:

[79] Judgment of the Court of Justice in case 267/83 *Diatta.*

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

- *Nigerian national travels to join her French spouse residing in Spain – Directive 2004/38/EC applies.*
- *Maltese national living in Malta travels to Sweden where his Russian spouse wants to join him later – Directive 2004/38/EC applies.*
- *Estonian national living in Cyprus with a Bolivian spouse travels to Estonia to visit family. Her spouse wants to join her later for the visit – Directive 2004/38/EC applies to the spouse.*

1.2. Does Article 14(3) of the EU-UK Withdrawal Agreement apply to the Visa applicant?

This point of the handbook provides the consulates and visa authorities with operational instructions as regards the rules relating to visa applicants who are non-EU family members falling under the EU-UK Withdrawal Agreement and seeking to join the UK national Withdrawal Agreement beneficiary in the host State. By virtue of Article 14(3) of the EU-UK Withdrawal Agreement, the specific rules for these applicants relating to visas are the same as those laid down in Directive 2004/38/EC for family members of EU citizens, and this point provides instructions for assessing whether they apply.

If any of the questions below are answered in the negative, the applicant is not entitled to the specific treatment under Article 14(3) of the EU-UK Withdrawal Agreement *(point 4.11)*.

If, on the contrary, the three questions are answered in the affirmative, it has been established that the specific rules laid down in Directive 2004/38/EC apply. Consequently, the guidelines from points 2 through 4 apply.

Question 1: Is there a UK national benefitting from the EU-UK Withdrawal Agreement from whom the visa applicant can derive any rights?

UK nationals who resided in an EU Member State in accordance with EU law on the free movement of persons on 31 December 2020, and who continued to reside there thereafter, fall within the scope of the EU-UK Withdrawal Agreement.

Member States implement the EU-UK Withdrawal Agreement residence rights through either a constitutive scheme under Article 18(1) of the EU-UK Withdrawal Agreement or a declaratory scheme under Article 18(4) of the Withdrawal Agreement[80].

Under **constitutive schemes**, UK nationals needed to apply to become EU-UK Withdrawal Agreement beneficiaries. When the host Member State grants EU-UK Withdrawal Agreement beneficiary status, it also issues a residence document that evidences the status of the Withdrawal Agreement beneficiary.

Under **declaratory schemes**, UK nationals automatically became EU-UK Withdrawal Agreement beneficiaries on 1 January 2021, if they fulfilled all conditions of the EU-UK Withdrawal Agreement. While strongly recommended, it is not mandatory for such UK

[80] The following Member States implement a constitutive scheme: BE, DK, FR, LV, LU, HU, MT, NL, AT, RO, SI, FI, SE. The following Member States implement a declaratory scheme: BG, CZ, DE, EE, IE, EL, ES, HR, IT, CY, LT, PL, PT, SK. Information about national residence schemes for each Member State is available here.

nationals to hold a residence document that evidences their status as Withdrawal Agreement beneficiaries.

How to identify a Withdrawal Agreement beneficiary?

The residence document issued by Member States under Article 18(1) or 18(4) of the EU-UK Withdrawal Agreement evidences Withdrawal Agreement beneficiary status. Specimens of the Withdrawal Agreement residence document are available in Annex 42 of the Practical Handbook for Border Guards. If a UK national claims to be a Withdrawal Agreement beneficiary but does not hold a valid EU-UK Withdrawal Agreement residence document, s/he may prove the status by other means. In a host Member State with a declaratory scheme, the UK national will have to credible evidence that s/he exercised free movement rights in the host Member State on 31 December 2020 and continues to reside there. In a host Member State with a constitutive scheme, the UK national will have to prove that s/he was granted Withdrawal Agreement beneficiary status.

Question 2: **Does the visa applicant fall under the EU-UK Withdrawal Agreement definition of 'family member' and have the right to join the UK national Withdrawal Agreement beneficiary?**

The EU-UK Withdrawal Agreement sets out family members in its Articles 9 and 10. **With the exception of children who are born to or adopted by a Withdrawal Agreement beneficiary after the end of the transition period (31 December 2020), the family relationship must have existed on 31 December 2020**.

Only the following categories of family members can still join the UK national Withdrawal Agreement beneficiary:

- family members who were directly related to the Withdrawal Agreement beneficiary ('core family members) and resided outside the host State on 31 December 2020 and who fulfil the relevant conditions of Article 2(2) of Directive 2004/38/EC at the moment they seek residence under the Withdrawal Agreement in order to join the beneficiary in the host State (Article 10(1), point (e)(ii), of the EU-UK Withdrawal Agreement);
- children born to, or legally adopted by, a UK national Withdrawal Agreement beneficiary (Article 10(1), point (e)(iii), of the EU-UK Withdrawal Agreement);
- those who were durable partners and resided outside the host State on 31 December 2020 and whose relationship with the UK national Withdrawal Agreement beneficiary continues at the time they seek residence in the host State (Article 10(4) of the EU-UK Withdrawal Agreement);
- Even though not explicitly mentioned in Article 10 of the EU-UK Withdrawal Agreement, persons other than those defined under Article 3(2) of Directive 2004/38/EC whose presence is required by UK nationals in order not to deprive them of their EU-UK Withdrawal Agreement right of residence can also still join the UK national in the host Member State (Article 9(a)(ii) of the EU-UK Withdrawal Agreement).

Examples

- A UK national, who married her long-term Chinese partner in 2023 (a durable relationship having existed before 2020), is a Withdrawal Agreement beneficiary in Estonia. For professional reasons, her Chinese husband has been living in the US. However, he wishes to move to Estonia in 2024 and live together with his UK wife.

He falls under the EU-UK Withdrawal Agreement and has the right to join his UK wife in Estonia.

- A UK national, who is a Withdrawal Agreement beneficiary in France, adopts a child of Pakistani nationality in 2022.

The child falls under the EU-UK Withdrawal Agreement and has the right to join the UK national in France.

<u>Question 3:</u> Does the visa application fall under Article 14(3) of the EU-UK Withdrawal Agreement?

The **EU-UK Withdrawal Agreement does <u>not</u> govern short stays** of family members of Withdrawal Agreement beneficiaries in the host State for the purposes of visiting the beneficiaries. Family members of Withdrawal Agreement beneficiaries who want to enter the EU for a short stay fall under the general provisions of the Visa Code and must comply with the regular entry conditions for non-EU nationals, which are set out in the Schengen Borders Code.

Only **family members who seek residence in the host State under the provisions of the EU-UK Withdrawal Agreement in order to join the Withdrawal Agreement beneficiary** there (i.e. the family members want to become Withdrawal Agreement beneficiaries themselves) **can rely on the visa facilitations of Article 14(3) of the EU-UK Withdrawal Agreement**.

If all three questions are answered in the affirmative, the visa application falls under Article 14(3) of the EU-UK Withdrawal Agreement.

Article 14(3) provides that where non-EU family members who join the United Kingdom national are required to have an entry visa, "*the host Member State shall grant such persons every facility to obtain the necessary visas. Such visas shall be issued free of charge as soon as possible, and on the basis of an accelerated procedure*".

Non-EU family members who fall under the EU-UK Withdrawal Agreement and seek to join the UK national Withdrawal Agreement beneficiary in the host State must therefore be put on an equal footing with family members of EU citizens benefitting from the mirroring provisions in Directive 2004/38/EC, provided all the conditions described in questions 1, 2 and 3 above are fulfilled.

Non-EU family members who have lost their Withdrawal Agreement beneficiary status by final decision of the host State cannot, at a later stage, rely anew on Article 14(3) of the Withdrawal Agreement.

2. CAN DIRECTIVE 2004/38/EC OR THE EU-UK WITHDRAWAL AGREEMENT EXEMPT FAMILY MEMBERS OF EU CITIZENS OR OF UK NATIONAL WITHDRAWAL AGREEMENT BENEFICIARIES FROM THE VISA REQUIREMENT?

This point provides for the specific exemptions from the visa requirement that apply when it is ascertained that the visa applicant falls under Directive 2004/38/EC *(see point 1.1 – questions 1, 2 and 3)* or under the EU-UK Withdrawal Agreement *(see point 1.2 – questions 1, 2 and 3).*

Directive 2004/38/EC provides for a visa exemption rule that is specifically bound to a particular type of residence card.

Article 14(2) of the EU-UK Withdrawal Agreement provides that no exit visa, entry visa or equivalent formality are to be required of holders of a valid document issued in accordance with Article 18 or 26 of the EU-UK Withdrawal Agreement.

It is therefore essential that consulates properly identify the relevant residence cards issued in accordance with Directive 2004/38/EC and the residence documents issued in accordance with the EU-UK Withdrawal Agreement.

2.1 Relevant residence cards under the Directive

The following residence cards have a visa-exempting effect under Directive 2004/38/EC:

- The 'Article 10' residence cards issued to family members of those EU citizens who have moved to a Member State other than that of their nationality;

- The permanent residence cards issued under Article 20 of Directive 2004/38/EC (replacing the five-year residence card issued under Article 10 of Directive 2004/38/EC).

Possession of a residence card issued under Article 10 and Article 20 of Directive 2004/38/EC [81] constitutes sufficient proof that the holder of that card is a family member of an EU citizen [82]. A residence card has a visa-exempting effect in all Member States, including in the EU citizen's Member State of nationality[83] and irrespective of the Member State that issued the card (including Cyprus and Ireland)[84].

Residence cards relevant under Directive 2004/38/EC exempt their holders from the visa requirement independently of whether or not the holder of the card accompanies or joins the EU citizen[85].

Examples:

- *German 'Article 10' residence card issued to the Chinese spouse of a Slovak citizen is relevant under Article 5(2) of Directive 2004/38/EC.*
- *Bulgarian 'Article 20' permanent residence card issued to the Moroccan spouse of a Belgian citizen is relevant under Article 5(2) of Directive 2004/38/EC.*
- *Irish 'Article 20' permanent residence card issued to the Philippine spouse of an*

81 Residence cards issued to beneficiaries under Articles 2(2) and 3(2) of Directive 2004/38/EC.

82 Judgment of the Court of Justice in case C-754/18, *Ryanair Designated Activity Company v Országos Rendőr-főkapitányság*, ECLI:EU:C:2020:478.

83 Judgment of the Court of Justice in case C-202/13, *The Queen, on the application of Sean Ambrose McCarthy and Others v Secretary of State for the Home Department*, ECLI:EU:C:2014:2450, paragraph 41.

84 Judgment of the Court of Justice in case C-754/18, *Ryanair Designated Activity Company v Országos Rendőr-főkapitányság*, ECLI:EU:C:2020:478.

85 See also Part Two, Section I, point 2.8. of the Practical Handbook for Border Guards , https://home-affairs.ec.europa.eu/system/files/2022-11/Practical%20handbook%20for%20border%20guards_en.pdf

Estonian citizen is relevant under Article 5(2) of Directive 2004/38/EC.

Regulation (EU) 2019/1157 of the European Parliament and of the Council[86] provides for harmonised formats for residence cards and permanent residence cards issued to non-EU family members of EU citizens. Since 2 August 2021, Member States are obliged under that Regulation to issue such residence cards or permanent residence cards in a uniform format which is the same as used for residence permits. In addition, such documents bear the title 'Residence card' or 'Permanent residence card' and include the standardised code 'Family Member EU Art 10 DIR 2004/38/EC' or 'Family Member EU Art 20 DIR 2004/38/EC'.

Residence cards or permanent residence cards issued up until 2 August 2021 do not have to have a specific format. For those cards, Article 5 of Regulation (EU) 2019/1157 sets out a gradual phasing out period. This means that, for a certain number of years, there will be different formats of residence cards or permanent residence cards in circulation (the ones issued in a uniform format set out in Regulation (EU) 2019/1157 and the ones issued prior to 2 August 2021 without a harmonised format). In any event, residence cards or permanent residence cards that were issued after 2 August 2021 and that do not yet fully comply with the uniform format should be accepted by the other Member States until their expiry. However, if they do not meet the minimum security standards laid down in Regulation (EU) 2019/1157, they cease to be valid by 3 August 2023 or by 3 August 2026 depending on their level of security.

Moreover, the visa exemption also applies to:

- (permanent) residence cards issued to family members of EU citizens who have returned to the Member State of their nationality (point 1.1 – question 1); and
- (permanent) residence cards issued to family members of dual nationals where Directive 2004/38/EC applies to such family members by analogy (point 1.1 – question 1);
- (permanent) residence cards issued to '*Zhu and Chen* parents' (point 1.1 – question 2).

These three categories of non-EU family members should also be issued with a (permanent) residence card pursuant to Directive 2004/38/EC because the latter applies to them by analogy.

Further guidelines on the format of residence cards are contained in the Commission Guidance on the right of free movement of EU citizens and their families[67].

Since 1 January 2021, (permanent) residence cards previously issued by the United Kingdom under Articles 10 and 20 of Directive 2004/38/EC no longer have visa exempting effect in the EU. Biometric residence cards issued by the United Kingdom under its EU Settlement Scheme (UK implementation of the EU-UK Withdrawal Agreement) do not have visa exempting effects in the EU, either. Family members of EU citizens living in the United Kingdom who are covered by the EU-UK Withdrawal Agreement in the United Kingdom and

[86] Regulation (EU) 2019/1157 of the European Parliament and of the Council of 20 June 2019 on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement (OJ L 188, 12.7.2019, p. 67, ELI: http://data.europa.eu/eli/reg/2019/1157/oj).

who are subject to the visa requirement under Regulation (EU) 2018/1806 therefore need a visa to travel to an EU Member State as of 1 January 2021.

Further guidelines on the treatment of beneficiaries of the EU-UK Withdrawal Agreement are contained in Annex 42 of the Practical Handbook for Border Guards[87].

2.2 Residence cards that are not relevant

Any other residence document issued to family members of EU citizens does not exempt its holder from the visa requirement under Directive 2004/38/EC.

Residence documents issued under national legislation in a purely internal situation (family reunification with nationals of the issuing Member State who have not exercised the right of free movement) do not concern beneficiaries of free movement rules. Accordingly, Member States are to issue these residence documents under Council Regulation (EC) No 1030/2002[88]. Where the residence permit is issued by a Member State which fully applies the Schengen *acquis*, residence permits issued under Regulation (EC) No 1030/2002 have visa-exempting effects towards the other Member States that fully apply the Schengen *acquis*.

Example:

Finnish residence permit issued to the Libyan spouse of a Finnish citizen living in Finland.

Example:

The Libyan mother of an Irish child living in Ireland holds an Irish residence permit. The mother and the child want to travel together to France. The mother's residence permit does not have visa exempting effects. The mother will have to apply for a visa and she will then (for the visa application) fall under Directive 2004/38/EC (the relevant provisions of Directive 2004/38/EC are applicable by analogy to non-EU nationals who are primarly carers of mobile minor EU citizens).

2.3 The EU-UK Withdrawal Agreement residence document

The EU-UK Withdrawal Agreement residence document is issued under Article 18(1) or 18(4) of the EU-UK Withdrawal Agreement. It is the same type of document for UK nationals and their family members. Member States are to issue the EU-UK Withdrawal Agreement residence document in accordance with Commission Implementing Decision (EU) 2022/1945[89] using the uniform format for residence permits. Specimens of the EU-UK Withdrawal Agreement residence document are contained in Annex 42 of the Practical Handbook for Border Guards.

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87 C(2022) 7591 final, Annex to the Commission Recommendation establishing a common "Practical Handbook for Border Guards (Schengen Handbook)" to be used by Member States' competent authorities when carrying out the border control of persons and replacing Recommendation C(2019) 7131 final.

88 Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1, ELI: http://data.europa.eu/eli/reg/2002/1030/oj).

89 Commission Implementing Decision (EU) 2022/1945 of 21 February 2020 on documents to be issued by Member States pursuant to Article 18(1) and (4) and Article 26 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2022 L 268, p. 26, ELI: http://data.europa.eu/eli/dec_impl/2022/1945/oj).

In principle, all UK nationals and their family members who reside as Withdrawal Agreement beneficiaries in a Member State with a constitutive residence scheme hold a Withdrawal Agreement residence document. UK nationals and their family members who reside in a Member State with a declaratory scheme are strongly encouraged to hold a Withdrawal Agreement residence document, and might be required to register with national authorities and apply for a Withdrawal Agreement residence document, but their beneficiary status does not depend on it.

The EU-UK Withdrawal Agreement residence document exempts the holder from the visa requirement when travelling to the host Member State where he or she is an EU-UK Withdrawal Agreement beneficiary (Article 14(2) of the EU-UK Withdrawal Agreement). Where a family member holds an EU-UK Withdrawal Agreement residence document, s/he is exempted from the visa requirement also when travelling alone to the host Member State.

2.4. The EU-UK Withdrawal Agreement frontier worker document

The EU-UK Withdrawal Agreement frontier worker document is issued under Article 26 of the Withdrawal Agreement to UK nationals who have rights as frontier workers under the EU-UK Withdrawal Agreement. Although those UK nationals are not obliged to hold the frontier worker document in order to enjoy the rights granted by the EU-UK Withdrawal Agreement, they are strongly encouraged to do so in order to facilitate the crossing of the borders and avoid the stamping of their passports.

The EU-UK Withdrawal Agreement frontier worker document exempts the UK holder from the visa requirement (if there is one) when travelling to the Member State where he or she works and where he or she is an EU-UK Withdrawal Agreement beneficiary (Article 14(2) of the EU-UK Withdrawal Agreement).

2.5 Visa exemption under the Schengen Borders Code

Non-EU family members holding a valid residence document issued by a Member State applying the Schengen *acquis* in full are exempted from the visa requirement under Article 6 of the Schengen Borders Code, if the residence document fulfils the conditions listed in Article 2 point 16 of the Schengen Borders Code (see Annex 2).

Hence, residence documents issued under national legislation in a purely internal situation (family reunification with own nationals, nationals of the issuing Member State who have not exercised the right of free movement) can also exempt their holders from the visa requirement under the Schengen Borders Code.

In addition, a residence document issued under Article 18 of the EU-UK Withdrawal Agreement to UK nationals and their family members by Member States applying the Schengen *acquis* in full exempts the holder from the visa requirement under the Schengen Borders Code.

Under Article 2(1) of Council Decision No 565/2014/EU[90], the visa exempting effect of a residence document issued by a Member State applying the Schengen *acquis* in full also

[90] Decision No 565/2014/EU of the European Parliament and of the Council of 15 May 2014 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for transit

extends to Cyprus. In other words, residence documents (as well as valid multiple-entry short-stay and long-stay visas) issued by Member States applying for the Schengen *acquis* in full exempt their holders from the visa-requirement in Cyprus. This also includes residence documents issued under the EU-UK Withdrawal Agreement.

However, non-EU family members of UK nationals who hold a valid Withdrawal Agreement residence document issued by Cyprus are not visa-exempt in the Member States applying the Schengen *acquis* in full.

In any case, the more favourable provisions should apply.

Examples:

- *A Slovak citizen resides with her Chinese spouse in Germany. They travel to France. As the Chinese spouse has a German residence card issued under Article 10 of Directive 2004/38/EC, there is no need for an entry visa.*
- *A German citizen resides with his Chinese spouse in Germany. They travel to Spain. As the Chinese spouse holds a German residence permit issued under national law by a Schengen Member State (note that this card is not relevant under Article 5(2) of Directive 2004/38/EC), there is no need for an entry visa under the Schengen Borders Code.*
- *A Slovak citizen resides with her Chinese spouse in Cyprus. They travel to France. As the Chinese spouse has a Cypriot residence card issued under Article 10 of Directive 2004/38/EC, the spouse is exempted from the visa requirement under Directive 2004/38/EC (but not under the Schengen Borders Code as Cyprus does not yet apply the Schengen acquis in full).*
- *A Slovak citizen resides with his Chinese spouse in Ireland. The Chinese spouse holding a residence card, issued by Ireland under Article 10 of Directive 2004/38/EC, travels alone to France. He is exempted from the visa requirement under Directive 2004/38/EC, even if he travels alone (but not under the Schengen Borders Code, as Ireland does not take part in that instrument).*
- *A UK national and her Chinese spouse are EU-UK Withdrawal Agreement beneficiaries in Germany. They travel to France. As the Chinese spouse has a Withdrawal Agreement residence document issued by Germany, there is no need for an entry visa.*
- *A UK national and his Indian spouse are EU-UK Withdrawal Agreement beneficiaries in Cyprus. They travel to Austria. As Cyprus does not yet apply the Schengen acquis in full, the Indian spouse needs to apply for a visa to enter Austria.*

through or intended stays on their territories not exceeding 90 days in any 180-day period and repealing Decisions No 895/2006/EC and No 582/2008/EC (OJ L 157, 27.5.2014, p. 23, ELI: http://data.europa.eu/eli/dec/2014/565(2)/oj).

3. TERRITORIAL COMPETENCE FOR VISA APPLICATIONS BY NON-EU FAMILY MEMBERS OF EU CITIZENS AND OF UK NATIONALS BENEFITTING FROM THE EU-UK WITHDRAWAL AGREEMENT

Articles 6 and 7 of the Visa Code govern consular territorial competence, i.e. the conditions under which visa applicants can lodge their applications in a particular EU and non-EU country.

Articles 6 and 7 of the Visa Code apply to all visa applicants, regardless of whether they are family members of EU citizens or not. However, Directive 2004/38/EC, as interpreted by the Court of Justice, requires certain adjustments in relation to applications lodged by family members in countries with which they have no link or where the link is irregular.

Given the privileges non-EU family members of EU citizens enjoy, consulates must carry out the test to identify whether the applicant is a beneficiary of Directive 2004/38/EC before applying Articles 6 and 7 of the Visa Code.

3.1 Article 6

Directive 2004/38/EC and the EU-UK Withdrawal Agreement require Member States to grant every facility to non-EU family members applying for an entry visa. However, this obligation does not require Member States to accept visa applications lodged by non-EU family members in countries where they do not lawfully reside *(for example, if they do not hold a valid residence document issued by that country or are not entitled to one)* or are not lawfully present there. This is reflected in the structure of Article 6 of the Visa Code, notably in paragraph 2.

Article 6 of the Visa Code cannot be used to automatically refuse to examine a visa application. Consulates and visa authorities may refuse a visa application pursuant to Article 6 if the justification provided by the visa applicant for lodging his/her application at that consulate is considered insufficient.

3.2 Article 7

Applications lodged by non-EU family members in an EU Member State are governed by Article 7 of the Visa Code.

However, Directive 2004/38/EC, as interpreted by the Court of Justice, precludes Member States from refusing to accept their visa applications on the grounds that the visa applicant:

- does not (yet) hold a valid residence card.

  Under Directive 2004/38/EC, the right of entry and residence is bound exclusively to whether or not the conditions of that Directive are met – residence cards have only declaratory value and cannot serve as a source of rights *(see case C-325/09* Dias *for more details[91])*. Moreover, under Article 10(1) of Directive 2004/38/EC, Member States have up to six months to issue the residence card.

- resides in the Member State concerned lawfully, but entered in an irregular manner.

[91] Judgement of the Court of Justice in case C-325/09, Secretary of State for Work and Pensions v Maria Dias, ECLI:EU:C:2011:498.

Rights of family members under Directive 2004/38/EC cannot be withdrawn on the grounds that they have entered the country in breach of rules or reside there in an irregular manner *(see case C-459/99* MRAX *for more details*[92]*)*.

Against this background, Article 7 of the Visa Code cannot be invoked to refuse to accept visa applications submitted by family members of EU citizens in an EU Member State.

The above applies *mutatis mutandis* for visa applications falling under the EU-UK Withdrawal Agreement (point 1.2).

4. SPECIFIC DEROGATIONS FROM THE GENERAL RULES OF THE VISA CODE

This point provides for operational instructions concerning the specific derogations from the general rules of the Visa Code that are to be applied when it has been ascertained that the visa applicant falls under Directive 2004/38/EC or the EU-UK Withdrawal Agreement and that there is no exemption from the visa requirement. These operational instructions also apply when a new visa has to be issued to facilitate travel while the family member's residence card application or application for a Withdrawal Agreement residence document is being processed by the host Member State.

These specific derogations are not exhaustive.

4.1 Visa fee

No visa fee can be charged.

4.2 Outsourcing of the collection of applications

As non-EU family members should not pay any fee when submitting the application, they cannot be obliged to obtain an appointment via a premium call line or via an external provider whose services are charged to the applicant. Non-EU family members must be allowed to lodge their application directly at the consulate without any costs. This possibility must be genuine and effective.

If an appointment system is nevertheless in place *(either for the external provider or for a meeting at the consulate)*, separate call lines *(at ordinary local tariff)* to the consulate should be made available to family members respecting standards comparable to those of 'premium lines', i.e. the availability of such lines should be comparable to those in place for other categories of applicants and an appointment must be allocated without delay.

Where non-EU family members decide not to make use of their right to lodge their application directly at the consulate but to use the services of an external company or extra services, they may be required to pay for these services (but not the fee for the visa itself). By contrast, if their application is lodged directly at the consulate, the visa application should be processed without any costs. If applicable, service fees are to duly respect the requirements of Article 17(4) of the Visa Code.

In any event, external providers provide their services under the responsibility of the Member State that contracted them. Member States are particularly responsible for the quality of information provided by external service providers on their websites and when

[92] Judgement of the Court of Justice in case C-459/99, Mouvement contre le racisme, l'antisémitisme et la xénophobie ASBL (MRAX) v Belgian State, ECLI:EU:C:2002:461.

communicating with the general public. The information provided on the websites must be comprehensive, correct and easily accessible.

4.3 Granting every facility

Member States shall grant non-EU family members of EU citizens falling under Directive 2004/38/EC and non-EU family members of UK nationals who are EU-UK Withdrawal Agreement beneficiaries every facility to obtain the necessary visa. This notion must be interpreted as ensuring that Member States take all appropriate measures to ensure fulfilment of the obligations arising from the right of free movement or the EU-UK Withdrawal Agreement, respectively, and afford to such visa applicants the best conditions to obtain the entry visa.

4.4 Processing time

The visas must be issued as soon as possible and on the basis of an accelerated procedure. The procedures put in place by Member States *(with or without outsourcing)* must make it possible to distinguish the rights of a non-EU national who is a family member of an EU citizen or of a UK national Withdrawal Agreement beneficiary, from those of other non-EU nationals. The former must be treated more favourably than the latter.

Non-EU family members should be able to obtain appointments with the external service providers or at consulates as soon as possible so as to ensure that they can genuinely benefit from an accelerated procedure.

Processing times for a visa application lodged by a non-EU national who is a family member of an EU citizen covered by Directive 2004/38/EC or of a UK national who is a Withdrawal Agreement beneficiary going beyond 15 days should be exceptional and duly justified. Delays of more than 4 weeks are not reasonable.

4.5 Types of visa issued to family members of EU citizens (including those intending to stay for more than 90 days in any 180-day period) and of UK national Withdrawal Agreement beneficiaries

Article 5(2) of Directive 2004/38/EC provides that non-EU nationals who are family members of EU citizens may only be required to have an entry visa in accordance with Regulation (EU) No 2018/1806.

Non-EU family members' right to stay is derived from the right of the EU citizen. Member States shall issue short stay visas to non-EU family members of mobile EU citizens[93]. The consulates and visa authorities of the Member States should guide the non-EU family members as to the type of visa they should apply for (i.e. short-stay visa), and they cannot require them to apply for long-term, residence or family reunification visas.

To reflect the privileged situation of non-EU family members of EU citizens, Member States should not take into consideration the family member's economic situation in his or her country of origin or his or her genuine intention to leave the territory of the Member States before the expiry of the visa applied for, when applying Article 24(2a) and (2c) of the Visa Code regarding the issuing of a multiple-entry visa.

[93] See judgement of the Court of Justice in case C-157/03, *vol*, paragraph 34, ECLI:EU:C:2005:225:.

The preceding paragraphs apply also with regard to the EU-UK Withdrawal Agreement for non-EU family members who seek to join the UK national Withdrawal Agreement beneficiary in the host State.

Recommended best practice

It is recommended that Member States print a remark in the national 'comments' field of the visa sticker when issuing visas to family members of mobile EU citizens under Directive 2004/38/EC, and to family members of beneficiaries of the EU-UK Withdrawal Agreement, in accordance with Article 27(2) of the Visa Code. This practice would allow for clear identification of such visas at the border (Part I, point 10.1).

4.6 Burden of proof

The burden of proof applicable in the framework of the visa application under the Directive and the EU-UK Withdrawal Agreement is twofold:

(a) Firstly, it is up to visa applicants to prove that they are beneficiaries of Directive 2004/38/EC or that they fall under the EU-UK Withdrawal Agreement.

Applicants must be able to provide documentary evidence described below in point 4.7 as they must be able to present evidence to support their claim. If an applicant fails to provide such evidence or provides no evidence at all, the consulate may conclude that he/she is not entitled to the specific treatment under Directive 2004/38/EC or the EU-UK Withdrawal Agreement.

(b) Secondly, once the status of the beneficiary of Directive 2004/38/EC or the fact of falling under the EU-UK Withdrawal Agreement is satisfactorily established, the consulates and national authorities may refuse the visa application:

i. on the grounds that the visa applicant is a genuine, present and sufficiently serious threat to public policy, public security or public health; or
ii. in the event of abuse or fraud.

In the cases mentioned in paragraph (b), the burden of proof lies with the national authorities, as they must be able to present evidence to support their claim that the visa applicant (who has presented sufficient evidence to attest that he/she meets the criteria in Directive 2004/38/EC) should nevertheless not be issued with an entry visa.

The authorities must be able to build a convincing case while respecting all the safeguards of Directive 2004/38/EC, which apply also under the EU-UK Withdrawal Agreement. The decision refusing the visa application on grounds of public policy, public security or public health or on grounds of abuse or fraud must be notified in writing, fully justified (e.g. by listing all legal and material aspects taken into account when concluding that a marriage is a marriage of convenience or that a presented birth certificate is fake).

4.7 Supporting documents

In order to prove that the applicant has the right to be issued with an entry visa under Directive 2004/38/EC or under the EU-UK Withdrawal Agreement, he/she must establish that he/she is a beneficiary of Directive 2004/38/EC or falls under the Withdrawal Agreement.

A- For beneficiaries of Directive 2004/38/EC

The status of the beneficiary of **Directive 2004/38/EC** is established by presenting documents relevant for the purposes of the three questions referred to in point 1.1, i.e. proving that:

1) there is an EU citizen from whom the visa applicant can derive any rights

   The burden of proof is discharged by presenting evidence as regards the EU citizen's identity and nationality *(e.g. a valid travel document)*[94].

2) the visa applicant is a family member of such an EU citizen

   The burden of proof is discharged by presenting evidence as regards the family member's identity *(e.g. a valid travel document)*, their family ties *(e.g. a marriage certificate, birth certificate, etc.)* and, if applicable, proof of meeting the other conditions of Articles 2(2) or 3(2) of Directive 2004/38/EC *(e.g. evidence relating to dependency, serious health grounds, durability of partnerships, etc.)*.

   Further guidelines on the supporting documents to attest the family relationship with the EU citizen are in the Commission Guidance on the right of free movement of EU citizens and their families. As further explained in the Guidance, specific rules apply to documents attesting a family relationship issued by a Member State.

3) the visa applicant will accompany or join an EU citizen in the host Member State.

   (points 4.7.1 and 4.7.2.)

B- Joining family members under the EU-UK Withdrawal Agreement

The fact of falling under the **EU-UK Withdrawal Agreement** is established by presenting documents relevant for the purposes of the three questions referred to in point 1.2, i.e. proving that:

1) there is a UK national Withdrawal Agreement beneficiary from whom the visa applicant can derive rights

   The burden of proof is discharged by presenting evidence as regards the UK national's identity *(e.g. a valid travel document)*[95] and his/her status of EU-UK Withdrawal Agreement beneficiary *(e.g. a valid EU-UK Withdrawal Agreement residence document issued under Article 18 of the Withdrawal Agreement)*;

2) the visa applicant is a family member of such a UK national Withdrawal Agreement beneficiary and has the right to join the UK national Withdrawal Agreement beneficiary in the host Member State.

   The burden of proof is discharged by presenting evidence as regards the family member's identity *(e.g. a valid travel document)*, their family ties *(e.g. a marriage certificate, birth certificate, etc.)* and, if applicable, proof of meeting the other

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94 The passport should be valid at the day of actual travel. Please note that under the terms of the Council of Europe's European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe *(http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/025)*, nationals of participating Member States can travel with a travel document that has expired.

95 The passport should be valid at the day of actual travel. Please note that under the terms of the Council of Europe's European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe *(http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/025)*, nationals of participating Member States can travel with a travel document that has expired.

conditions of Articles 2(2) or 3(2) of Directive 2004/38/EC, as required by Article 10 of the EU-UK Withdrawal Agreement *(e.g. evidence relating to dependency or durability of partnership)*, or proof of the fact that the applicant's presence is required for the UK national to enjoy his Withdrawal Agreement residence right (Article 9(a)(ii) of the Withdrawal Agreement).

3) the requirement that the visa application falls under the EU-UK Withdrawal Agreement is met if the non-EU family member seeks residence in the host State under the provisions of the EU-UK Withdrawal Agreement in order to join the Withdrawal Agreement beneficiary there (i.e. the family member wants to become a EU-UK. Withdrawal Agreement beneficiary himself or herself). Short stays for the purpose of visiting a UK national Withdrawal Agreement beneficiary do not fall under the EU-UK Withdrawal Agreement.

4.7.1 Joining an EU citizen or a UK national who is a EU-UK Withdrawal Agreement beneficiary

If the EU citizen is already resident or present in the host Member State, the burden of proof is discharged by presenting evidence of the EU citizen's residence or presence in the host Member State *(e.g. a valid registration certificate issued by the host Member State)*. The level of evidence depends on the nature of the EU citizen's residence in the host Member State:

(a) for residence shorter than three months *(Article 6(1) of Directive 2004/38/EC)*, EU citizens do not have to meet any requirements and do not have to possess any residence document;

(b) for a residence of more than three months *(Article 7(1) of Directive 2004/38/EC)*, EU citizens have to meet the conditions the Directive attaches to the right of residence and Member States may require them to possess registration certificates;

(c) for the right of permanent residence *(Article 16(1) of Directive 2004/38/EC)*, EU citizens do not have to meet any additional requirements but Member States may require them to possess documents certifying permanent residence.

Please note that some Member States do not operate any registration scheme or make it voluntary to register. Consequently, EU citizens residing in these Member States cannot be required to have a registration certificate. In any event, residence documents cannot be a prerequisite for providing a visa to a family member. They can, however, constitute one means of proving that the EU citizen is resident in the Member State.

With regard to the EU-UK Withdrawal Agreement, see point 1.2 on how to establish if there is a UK national benefitting from the EU-UK Withdrawal Agreement from whom the visa applicant can derive any rights.

4.7.2 Accompanying an EU citizen

This is the case when the EU citizen is not yet a resident or present in the Member State of the destination but will travel there in the future.

Given that there can be no principled evidence of the EU citizen's residence or presence in the Member State of destination *(as the move will take place later)*, Member States cannot oblige visa applicants to provide 'evidence' of future travel *(requirements relating to travel or accommodation arrangements do not amount to proof of future travel – such arrangements only show that travel or accommodation was paid for in advance, not that the travel will actually happen)*.

Against this background, Member States should merely ask for confirmation that the EU citizen will travel to the Member State of destination and process the visa application under the assumption that the visa applicant is a beneficiary of Directive 2004/38/EC[96].

The veracity of this assumption can be verified later at the border when the visa holder seeks entry. In accordance with Article 30 of the Visa Code, i.e., the provision that the mere possession of a visa does not confer an automatic right of entry, border guards can require such visa holders to provide evidence that there actually is an EU citizen resident or present in the Member State of destination. In most cases, this will be complied with as a matter of course when the family member travels together with the EU citizen. Failure to provide such evidence can result in refusal of entry. This ability to check is without prejudice to the Schengen Borders Code which allows border guards to check whether non-EU nationals are in possession of a valid visa *(Article 6(1), point (b), of the Schengen Borders Code)*.

4.7.3 General rules

In addition to the rules on supporting documents set out above, several issues should be highlighted:

1) The only requirement relating to travel documents of EU citizens and their family members is that they have to be valid *(Article 5(1) of Directive 2004/38/EC)*. Member States cannot refuse a visa application on the grounds that the travel document:
   - does not have a certain future validity *(Article 12(a) of the Visa Code)* – it is enough that the travel document is valid on the day of entry into the territory;
   - does not have a certain number of free pages *(Article 12(b) of the Visa Code)*; or
   - is an old document without the latest security features *(Article 12(c) of the Visa Code)*.

2) It is an established principle of EU law in the area of free movement that visa applicants have the right to choose the documentary evidence by which they wish to prove that they are covered by Directive 2004/38/EC *(i.e. evidence of the family link, dependency, etc.)*. Member States may, however, ask for specific documents *(e.g. a marriage certificate as the means of proving the existence of marriage)*, but should not refuse other means of proof.
   For example, presenting a marriage certificate is not the only acceptable means of establishing family ties.

3) A Member State may require that the relevant documents be translated where the original document is drawn up in a language that is not understood by the authorities of the Member State concerned. If there are doubts as to the authenticity of the document *(e.g. concerning the issuing authority and the correctness of the data appearing on a document)*, a Member State may ask for the documents to be notarised, legalised or verified (e.g. by means of an apostille). However, the suspicion must be specific in that it concerns a specific document of an individual applicant as it would be disproportionate to systematically require verification and/or legalisation of all supporting documents in all cases.
   Nonetheless, if an assessment carried out by a Member State establishes that there are sufficiently solid grounds, based on objective data, for considering that a specific type of

[96] Where the visa applicant voluntarily provides evidence related to travel or accommodation arrangements and such evidence is found unconvincing or fraudulent by the national authorities, such finding can be taken into account in deciding whether the application is not fraudulent *(point 4.11)*.

document (e.g. a certificate of marriage) issued by a specific non-EU country is unreliable (due in particular to a high rate of forged or fraudulently obtained documents), the authorities of this Member State might in a specific case require verification or legalisation of the document in question. Such a measure must be limited to the types of documents of the issuing non-EU country in respect of which there are indications that justify the measure.

4) Non-EU family members may be required to provide additional documents only in the context of :

   – determining the Member State competent for examining and deciding on an application under Article 5 of the Visa Code; or

   – determining territorial competence for visa applications under Articles 6 and 7 of the Visa Code in order to establish their links with the country in which they lodge their entry visa applications.

5) Supporting documents, information and proof pursuant to the Visa Code that non-EU family members of EU citizens do not have to provide:

   – documents indicating the purpose of the journey, envisaged by Article 14(1), point (a), of the Visa Code[97];

   – documents relating to accommodation *(or proof of sufficient means to cover his/her accommodation)*, envisaged by Article 14(1), point (b), of the Visa Code;

   – documents indicating that they possess sufficient means of subsistence both for the duration of the intended stay and for the return to their country of origin or residence, or for the transit to a third country into which they are certain to be admitted, or that they are in a position to acquire such means lawfully, in accordance with Article 6(1)(c) and (3) of the Schengen Borders Code, envisaged by Article 14(1), point (c), of the Visa Code;

   – information enabling an assessment of their intention to leave the territory of the Member States before the expiry of the visa applied for, envisaged by Article 14(1), point (d), of the Visa Code;

   – proof of sponsorship or of private accommodation, envisaged by Article 14(4) of the Visa Code; or

   – proof that they are in possession of adequate and valid travel medical insurance to cover any expenses which might arise in connection with repatriation for medical reasons, urgent medical attention and/or emergency hospital treatment or death, during their stay(s) on the territory of the Member States, envisaged by Article 15 of the Visa Code.

These facilities are further reflected in the exemption for non-EU family members of EU citizens from filling in the following fields of the visa application form:

Field 21: *'current occupation';*

[97] Further details in judgement of the Court of Justice in case C-109/01, *Secretary of State for the Home Department v Hacene Akrich*, ECLI:EU:C:2003:491.

Field 22*:'employer and employer's address and telephone number. For students, name and address of educational establishment';*
Field 30: *'surname and first name of the inviting person(s) in the Member State(s). If not applicable, name of hotel(s) or temporary accommodation(s) in the Member State(s);*
Field 31: *'Name and address of inviting company/organisation';*
Field 32: *'Cost of travelling and living during the applicant's stay'.*

6) The Implementing Decisions establishing harmonised lists of supporting documents to be submitted in certain third countries by applicants for short stay visas, adopted by the Commission pursuant to Article 14(5a) of the Visa Code, do not apply to non-EU family members of EU citizens.

Taking into account the specific legal framework applicable to non-EU family members, such harmonised lists of supporting documents, as drawn up in local Schengen cooperation, cannot be applied to this category of visa applicants. The guidance of this Part III of the Visa Handbook which contains specific provisions regarding the supporting documents to be submitted by such family members are the only ones to apply.

7) As regards dependency, see the Commission Guidance on the right of free movement of EU citizens and their families.

The general rules are set out in point 4.7.3. apply, *mutatis mutandis*, with regard to visa applications falling under the EU-UK Withdrawal Agreement.

4.8 Recognition or registration of marriages contracted abroad

As stressed in the Commission Guidance on the right of free movement of EU citizens and their families, marriages validly contracted anywhere in the world must in principle be recognised for the purpose of applying Directive 2004/38/EC.

This principle also applies to the issuance of entry visas to non-EU family members of EU citizens who, as confirmed by the Court of Justice[98], derive this right from the family ties only.

By analogy with the closed list of supporting documents non-EU family members of EU citizens have to present with their applications for a residence card under Article 10(2) of Directive 2004/38/EC, non-EU family members applying for an entry visa under the Directive have to present a *'document attesting to the existence of a family relationship'*. This means that they cannot be required to have the document or relationship first registered in the Member State of the EU citizen's nationality or in the EU citizen's host Member State.

Requiring such registration amounts to an undue obstacle to the exercise of the right of free movement as it is likely to significantly delay the processing of some applications or even to make it impossible in some cases, given that some Member States do not have a system for registering foreign family relationship documents.

Point 4.8 applies also under the EU-UK Withdrawal Agreement as regards marriages contracted before 31 December 2020.

98 Judgement of the Court of Justice in case C-503/03, Commission v Spain, ECLI:EU:C:2006:74.

4.9 Refusal to issue a visa

Once the visa application has been lodged and a consular or visa authority has accepted to examine it, a non-EU family member may be refused a visa exclusively on the following grounds:

1. the visa applicant fails to demonstrate that he or she is covered by Directive 2004/38/EC or by the EU-UK Withdrawal Agreement on the basis of the visa application and attached supporting documents under point 4.7 *(i.e. it is clear that the reply to at least one of the three questions referred to in points 1.1 or 1.2 above is negative)*;
2. the national authorities demonstrate that the visa applicant is a genuine, present and sufficiently serious threat to public policy, public security or public health; or
3. the national authorities demonstrate that there has been abuse or fraud.

A visa may not be refused on the sole ground that the applicant is a person for whom an alert has been entered into the SIS for the purpose of refusing entry into the territory of the Member States[99]. Before refusing to issue a visa where there is an alert in the SIS, the Member State that decides on the visa must in any event verify whether the person concerned represents a genuine, present and sufficiently serious threat to public policy, and public security[100].

A visa may also not be refused on the sole ground that a Member State does not recognise the family member's passport. Although according to Article 25(3) of the Visa Code, it is in this case for a Member State to decide whether to issue a visa, if the Member State does not recognise the passport, the visa has to be issued on a separate sheet.

For further information, see the Commission Guidance on the right of free movement of EU citizens and their families.

4.10 Notification and reasons for a refusal

Article 30 of Directive 2004/38/EC provides that family members must be notified in writing of the refusal. Irrespective of the mandatory notification and reasons of refusals as provided by the Visa Code, refusal to issue a visa to a family member of an EU citizen must always be fully reasoned and list all the specific factual and legal grounds on which the negative decision was taken, so that the person concerned may take effective steps to ensure his/her defence[101].

The refusal must also specify the court or administrative authority with which the person concerned may lodge an appeal and the time limit for the appeal. This must also be complied with in the case of representation agreements.

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99 Judgement of the Court of Justice in case C-503/03, *Commission v Spain* (ECLI:EU:C:2006:74) and in case C-33/07, *Jipa*, ECLI:EU:C:2008:396.

100 Similarly, Article 27(2) of Directive 2004/387EC stipulates that previous criminal convictions are not in themselves to constitute grounds for taking such measures. As the Court ruled *(case C-50/06 Commission v Netherlands)*, a previous criminal conviction can be taken into account only in so far as the circumstances which gave rise to that conviction are evidence of personal conduct constituting a present threat to the requirements of public policy.

101 Judgement of the Court of Justice in case 36/75, *Rutili*, and judgement of the General Court in case T-47/03, *Sison*.

Forms may be used to notify a negative decision but the reasons given must always allow for a full justification of the grounds on which the decision was taken. Indicating one or more of several options by only ticking the boxes in the standard form set out in Annex VI to the Visa Code is therefore not sufficient in the case of refusal to issue a visa to a family member of an EU citizen.

Where the visa applicant fails to demonstrate that he or she is covered by the Directive and forms are used, a specific ground for refusal could be used: "the applicant does not fall under the provisions of Directive 2004/38/EC". If a specific ground for refusal cannot be added, ground 2 "justification for the purpose and conditions of the intended stay was not provided" of the standard form can be used. In any case, national authorities will need to substantiate the reasons for refusal as required by the Directive.

By virtue of Article 21 of the EU-UK Withdrawal Agreement, the above applies also with regard to refusals of visa applications lodged under the Withdrawal Agreement.

4.11 Reapplying under the standard rules of the Visa Code

Visa applications lodged by non-EU national family members of EU citizens under Directive 2004/38/EC must be processed in accordance with the rules of the Directive. It is not possible simply to decide to 'switch' to applying the general provisions under the Visa Code without formally refusing the initial application in accordance with the rules of the Directive.

Member States cannot refuse to process visa applications made by non-EU national family members of EU citizens under Directive 2004/38/EC on the sole ground that the particular visa applicant may also hold the nationality of an EU Member State (*or be ex lege entitled to such nationality*), where the only proof of nationality submitted with the visa application is the travel document issued by a third country.

When the consulate - after having established that the particular visa applicant is not a beneficiary of the Directive - concludes that the visa application is to be refused this must be done in accordance with the procedure described in points 4.9 and 4.10. In such a case, the refusal is based on the failure of the applicant to demonstrate that he or she is covered by the Directive.

When the visa application has been refused formally, the consulate may invite the visa applicant to reapply under the general provisions of the Visa Code and to provide the necessary missing documents and pay the fee, as applicable. The consulate may reuse information and documents that the applicant already provided at the time of applying under the Directive.

This point, *mutatis mutandis*, with regard to visa applications lodged under the EU-UK Withdrawal Agreement.

5. ABUSE AND FRAUD IN ENTRY VISA APPLICATIONS

Detailed guidance – including operational guidance – on how to tackle abuse and fraud is given in the Commission Guidance on the right of free movement of EU citizens and their families and, in particular, in the Handbook on marriages of convenience[102].

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102 COM(2014) 604 final, Communication from the Commission to the European Parliament and to the Council, Helping national authorities fight abuses of the right to free movement: Handbook on addressing the issue of alleged marriages of convenience between EU citizens and non-EU nationals in

The following merely presents detailed guidance in the context of entry visa applications by family members of EU citizens.

By virtue of Article 20(3) and (4) of the EU-UK Withdrawal Agreement, this point applies, *mutatis mutandis*, with regard to visa applications lodged under the EU-UK Withdrawal Agreement.

5.1 General observations

People may seek to manipulate the facts or the rules or procedures provided in free movement law in order to obtain an abusive advantage and circumvent limitations under national immigration laws which would be applicable to non-EU nationals wanting to settle in their own capacity.

To tackle this unwanted phenomenon, Article 35 of Directive 2004/38/EC gives Member States the possibility to *'adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Directive in the case of abuse of rights or fraud, such as marriages of convenience.'*

For the purposes of Directive 2004/38/EC, the notion of abuse refers to an artificial arrangement entered into solely with the purpose of obtaining the right of free movement and residence under EU law which, albeit formally observing the conditions laid down by EU rules, does not comply with the purpose of those rules[103].

Abuse should be distinguished from fraud. Fraudsters seek to break the law by presenting fraudulent documentation alleging that the formal conditions have been duly met or which is issued on the basis of false representation of a material fact concerning the conditions attached to the right of residence. For instance, submitting a forged marriage certificate with a view to obtaining a right of entry and residence under Directive 2004/38/EC would be a case of fraud and not of abuse, since no marriage was actually contracted.

In this context, strange or unusual conduct in itself does not represent abuse or fraud.

5.2 Forms of abuse of EU free movement law

There are three predominant forms of abuse of EU law on free movement of EU citizens:

a) marriages of convenience

The notion of marriage of convenience for the purposes of the EU free movement rules refers to a marriage contracted for the sole purpose of conferring a right of free movement and residence under EU law on free movement of EU citizens to a spouse who would otherwise not have such a right.

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the context of EU law on free movement of EU citizens, and, in particular, Commission Staff Working Document SWD(2014) 284 final.

103 This can be illustrated on marriages of convenience. Every marriage of convenience is, by definition, a valid marriage in that the parties to it have legally become spouses. A marriage of convenience has been entered into at a specific time and place, following the ceremony laid down by the applicable national marriage law and after overcoming any legal impediments to marry *(such as impediments related to capacity, consent, prohibited degrees of consanguinity or the prevention of bigamy)*. Consequently, the couple can produce a formally valid marriage certificate.

In principle, abuse can also take the form of other relationships of convenience *(such as partnership of convenience)* but all the guidance pertaining to marriages of convenience can be applied *mutatis mutandis*.

b) parenthood of convenience

The notion of parenthood of convenience for the purposes of the EU free movement rules refers to a declaration of parenthood by an EU citizen made for the sole purpose of conferring a nationality *(and the connected statuses, such as EU citizenship, and rights, such as the right of free movement and residence under EU law on free movement of EU citizens)* to a child who is not a biological child of the EU citizen.

c) abuse by returning nationals

Abuse may also occur when EU citizens, unable to be joined by their non-EU family members in their Member State of origin because of the application of national immigration rules preventing it, move to another Member State with the sole purpose of evading, upon returning to their home Member State, the national law that frustrated their family reunification efforts, by invoking their rights under EU law.

As confirmed by the Court of Justice[104], EU citizens benefit from the protection of EU law on free movement of EU citizens upon return from another Member State only if:

a) they have genuinely settled in that Member State pursuant to and in conformity with the conditions set out in Articles 7(1) or 16(1) of Directive 2004/38/EC;
b) created or strengthened family life in that Member State by residing with the family member concerned; and
c) there was no abuse *(for a conduct to be abusive, there has to be:*

   - *a combination of objective circumstances indicate that the purpose of EU rules were not achieved, despite the fact that the conditions laid down by these rules were formally fulfilled; and*

   - *a subjective element consisting in the intention to obtain an advantage from the EU rules by artificially creating the conditions laid down for obtaining it)*.

Abuse by returning nationals can by definition materialise only in the Member State of nationality of the returning EU citizen.

The move to the host Member State *(from which the EU citizen may eventually return home and then seek to bypass domestic immigration rules)* is not abusive – on the contrary, there is no abuse where EU citizens and their family members obtain a right of residence under EU law in a Member State other than that of the EU citizen's nationality as they are benefiting from an advantage inherent in the exercise of the right of free movement protected by the Treaty, regardless of the purpose of their move to that State (cases C-109/01 *Akrich* and C-1/05 *Jia*). This presupposes, however, that the persons in question meet the conditions for applying the returnees rules.

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104 Judgement of the Court of Justice in case C-456/12, *O. v Minister voor Immigratie, Integratie en Asiel* and *Minister voor Immigratie, Integratie en Asiel v B.*, ECLI:EU:C:2014:135.

For further information, see the Commission Guidance on the right of free movement of EU citizens and their families.

5.3 Different types of genuine marriages and marriages of convenience

On the ground, it may be challenging to distinguish between different types or forms of marriages, in particular between genuine marriages and marriages of convenience.

More detailed guidance to help tackle abusive marriages more effectively by enhancing the understanding of what a marriage of convenience *(including marriages by deception)* is by contrasting it with forms of genuine marriages *(including arranged marriages, proxy or consular marriages)* is available in Section 2.2 of the *Handbook on marriages of convenience.*

5.3.1 Safeguards

Investigating marriages of convenience and decision-making on the basis of the evidence collected by national authorities may be challenging for all the parties involved.

An incorrect decision restricting free movement rights on the grounds of abuse may have a significant negative impact on the rights and well-being of EU citizens and their families who have genuinely made use of their right to free movement. An incorrect decision may also lead to claims for damages or compensation against national authorities, and incur high costs in legal proceedings both for individuals and for national authorities.

Section 3 of the *Handbook on marriages of convenience* helps national authorities to identify all the factors and rules that must be taken into account when wanting to take any measure to prevent or tackle abuse, in particular the EU rules on free movement and fundamental rights.

5.3.2 Burden of proof

The burden of proof in relation to the right to enter a Member State and to reside there under EU free movement law is twofold.

Firstly, it is up to the family members to prove that they are beneficiaries of EU free movement law. Under Directive 2004/38/EC, when applying for an entry visa or a residence card, they must provide the necessary documents which are required in accordance with that Directive.

Once this burden of proof is *prima facie* discharged *(e.g. by presenting a valid marriage certificate)*, then the burden of proof shifts to the Member States' authorities to prove abuse[105]. This reflects the principle of law that the person who lays charges has to prove the charges. Entry visa applications cannot be refused on the basis of grounds that are isolated from the particulars of the case or that rely on considerations of general prevention.

However, if the Member States' authorities have well-founded suspicions as to the authenticity of a particular marriage, which are supported by evidence *(such as conflicting information provided by the spouses)*, they can invite the couple to produce further relevant documents or evidence or interview the couple simultaneously.

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[105] Married couples cannot be obliged or required, as a rule, to present evidence that their marriage is not abusive. EU citizens and their family members enjoy the benefit of assumption, meaning that they do not need to provide evidence that their marriage is genuine. To require this would go beyond the requirement to present proof that their marriage is valid.

Spouses have the obligation to cooperate with the authorities. This obligation should be communicated to the spouses. Should the couple provide additional evidence that dispels the concerns of the national authorities, the case can be closed and the marriage considered genuine. Should the couple fail to provide evidence that would dispel the suspicions which can reasonably be expected to be available to genuine couples or should the couple decide not to provide any evidence at all, this cannot form the sole or decisive reason to conclude that the marriage is a marriage of convenience.

It can, however, be taken into account by the authorities together with all other relevant circumstances in their assessment of whether or not the marriage is genuine.

5.4 Operational guidance, particularly for consulates

Section 4 of the *Handbook on marriages of convenience* is designed to serve as a toolbox of solutions enabling Member States to set up tailored operational schemes fitting their specific needs and available resources.

Section 4.1 provides insights into reasons and motivations behind marriages of convenience.

Sections 4.2-4.4 gives details of clues relating to conduct which abusive couples are reasonably expected to exhibit significantly more often than genuine couples that assist national authorities in deciding whether to trigger an investigation into a suspicious marriage.

It focuses particularly on the stage when the couple applies for an entry visa. Tackling marriages of convenience at the entry visa application stage is, by its own nature, more challenging because at that stage the national authorities have not necessarily been able to observe the conduct of the couple for long enough to be able to conclude that their marriage is a marriage of convenience.

When a consulate has suspicions about the nature of a particular marriage but cannot demonstrate the abusive nature of the marriage to the level of the applicable evidential standard, it cannot refuse to issue the entry visa. However, such issuance cannot prevent the consulate from continuing to investigate the couple and finding, when more evidence becomes available in the future, that the marriage is a marriage of convenience and then duly terminate or withdraw any right conferred by the national authorities under Directive 2004/38/EC.

Section 4.5 outlines the principal investigation and law enforcement techniques and tools national authorities can deploy to tackle marriages of convenience.

Finally, section 4.6 describes how cross-border cooperation can help Member States in tackling marriages of convenience.

6. FAMILY MEMBERS OF EU CITIZENS APPLYING FOR A VISA AT THE EXTERNAL BORDERS

When a family member of an EU citizen, accompanying or joining the EU citizen in question, and who is a national of a third-country subject to the visa obligation, arrives at the border without holding the necessary visa, the Member State concerned must, before turning him or her back, give the person concerned every reasonable opportunity to obtain the necessary documents or have them brought to him or her within a reasonable period of time to corroborate or prove by other means that he or she is covered by the right of free movement *(Article 5(4) of Directive 2004/38/EC).*

If he or she succeeds in doing so and if there is no evidence that he or she poses a risk to public policy, public security or public health requirements, the visa must be issued, without

delay, at the border, while taking account of the guidelines above.

7. OPERATIONAL INSTRUCTIONS ADDRESSED TO THE CONSULATES OF SWITZERLAND

Legal basis

This guidance aims at facilitating implementation of Article 1(2)(b) of the Visa Code.

Switzerland does not apply Directive 2004/38/EC but applies the Agreement of 21 June 1999 between the Swiss Confederation and the European Community and its Member States on the free movement of persons (AFMP)[106].

The Vaduz Agreement of 21 June 2001 amends the Convention of 4 January 1960 establishing the European Free Trade Association and extending the personal scope of the AFMP to cover citizens of EEA Member States.

Regarding the UK's Withdrawal from the EU, Switzerland does not apply the EU-UK Withdrawal Agreement, but applies the Agreement of 25 February 2019 between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland on citizen's rights following the withdrawal of the United Kingdom from the European Union and the free movement of persons agreement (UK-Switzerland Agreement on acquired citizens' rights).

7.1 Definition of 'family member' under the AFMP

Article 3(2) of Annex I to the AFMP provides that the following persons are considered to be family members of an EU citizen[107] and of a Swiss citizen:

- their spouse and their relatives in the descending line who are under the age of 21 or are dependent;
- their relatives in the ascending line and those of the spouse who are dependent on the EU citizen or the Swiss citizen;
- in the case of a student, their spouse and their dependent children.

7.2 Differences between Directive 2004/38/EC and the AFMP

The definition of family members under the AFMP and Swiss national legislation is less restrictive than the one under Article 2(2), point (b), of Directive 2004/38/EC. Swiss national legislation also confers the same rights to persons who do not fall within the definitions above. The facilities are granted to family members who travel alone (irrespective of whether the purpose of the trip is to join the EU citizen or not) or accompany the EU citizen.

The AFMP does not provide for the exemption from the visa requirement of family members of EU citizens. They are, however, exempted from the visa requirement if they hold a valid travel document and a residence permit listed in the List of residence permits issued by Member States (Annex 2).

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106 See footnote 67 regarding the treatment of family members of Swiss citizens by EU Member States.

107 Where reference is made to EU citizens, it must be understood as also referring to EEA citizens.

7.3 Specific derogations from the general rules of the Visa Code

Point 7.3 provides for operational instructions concerning the specific derogations from the general rules of the Visa Code that are to be applied when it has been ascertained that the visa applicant falls under the AFMP and that there is no exemption from the visa requirement.

7.3.1 Visa fee

Family members of EU citizens as defined by Article 3(2) of Annex I to the AFMP and persons with whom the EU citizen has contracted a registered partnership are exempted from paying the visa fee, according to national Swiss legislation.

7.3.2 Granting every facility – processing time

In accordance with Article 1(1) of Annex I to the AFMP, Switzerland grants all facilities for obtaining a visa to family members of EU citizens as defined by Article 3(2) of Annex I to the AFMP (see above). Based on its national legislation, Switzerland also grants such facilitations to persons with whom the EU citizen has contracted a registered partnership.

The following facilitations are granted:

- visa applications from family members of EU citizens as defined by Article 3(2) of Annex I to the AFMP and persons with whom the EU citizen has contracted a registered partnership are examined as soon as possible;
- the persons referred to above are not required to present proof of personal means of subsistence (e.g. cash, travellers cheques, credit cards);
- the persons referred to above are not required to present an invitation or proof of sponsorship and/or accommodation.

7.3.3 Types of visa issued

Non-EU family members may only be required to have an entry visa in accordance with Regulation (EU) No 2018/1806.

7.3.4 Supporting documents

In order to benefit from the facilitations provided for by the AFMP, the visa applicant must prove that he is a family member of an EU citizen *(e.g. a marriage certificate, birth certificate, proof of dependency, etc.)*.

7.3.5 Burden of proof

The burden of proof applicable in the framework of the visa application under the AFMP is twofold:

Firstly, it is up to the visa applicant to prove that he or she is a beneficiary of the AFMP. The applicant must be able to provide the documentary evidence mentioned in point 7.3.4 as he or she must be able to present evidence to support his/her claim.

If he fails to provide such evidence, the consulate can conclude that the applicant is not entitled to the specific treatment under the AFMP.

Additional documents may not be required regarding the purpose of travel and means of subsistence *(e.g. proof of accommodation, proof of the cost of travelling)*, which is in line with the exemption for family members of EU citizens from filling in certain fields of the visa application form:

Field 21: *'current occupation';*

Field 22*:'employer and employer's address and telephone number. For students, name and address of educational establishment';*

Field 30: *'surname and first name of the inviting person(s) in the Member State(s). If not applicable, name of hotel(s) or temporary accommodation(s) in the Member State(s);*

Field 31: *'Name and address of inviting company/organisation';*

Field 32: *'Cost of travelling and living during the applicant's stay'.*

The consulates may require that the relevant documents be translated, notarised or legalised where the original document is drawn up in a language that is not understood by the authorities of the Member State concerned or if there are doubts as to the authenticity of the document.

7.3.6 Notification and grounds for a refusal

The decision and the grounds for the refusal of a visa are notified to the visa applicant by means of the standard form. In accordance with national Swiss legislation, family members of EU citizens benefit from the same right of appeal as other visa applicants.

PART IV: VISAS APPLIED FOR AT THE EXTERNAL BORDER

Legal basis: Visa Code, Articles 35 and 36

1. APPLICATION FOR A VISA AT THE EXTERNAL BORDERS

1.1 Can a visa application be submitted at the border?

As a general rule, a visa should be applied for prior to the intended journey at the consulate of the competent Member State (Part II, Chapter 2) in the applicant's country of residence.

However, if the applicant can explain that for unforeseeable and imperative reasons he has not been in a position to apply for a visa in advance (meaning in the six months period prior to the intended trip), the application can be submitted at the border. The border control authorities may require that the unforeseeable and imperative need for entry be justified by documentation. The applicant's intention to return to his/her country of origin or residence or transit through States other than the Member States fully implementing the Schengen *acquis* should also be assessed as certain.

Examples** of unforeseeable and imperative reasons for entry justifying that a visa is applied for at the external border**:

- *Sudden serious illness of a close relative;*
- *Death of a close relative;*
- *Upon the decision of the competent Member State, dissidents, journalists and/or human rights defenders at imminent risk, when such risk is of a temporary nature and there is no doubt that the applicant intends to leave the territory of the Member States at the expiry of the visa;*
- *Entry required so that urgent initial medical and/or psychological care can be provided in the Member State concerned, in particular following an accident such as a shipwreck in waters close to a Member State, or other rescue and disaster situations;*
- *Unexpected rerouting of a flight: A flight between Delhi and London is scheduled to make a stop-over at Frankfurt airport (meaning that the passengers would not leave the aircraft during the stopover), but due to bad weather conditions in Frankfurt the flight is rerouted to Paris Charles de Gaulle airport, and the onward flight will only take place the following day;*
- *Last minute change of members of flight crew: the persons who are no longer part of the airplane crew would need a visa to stay in the territory of the Member States, waiting for another plane to take them back home as ordinary passengers (either from the same airport or from another airport in the territory of the Member States).*

As regards the specific rules relating to applicants who are family members of EU or Swiss citizens, see Part III.

1.2 Do special rules on the processing of a visa application apply at the border?

The general rules for examining and taking decisions on a visa application apply when the application is submitted at the border. However, given the circumstances (i.e. the element of urgency), under which visas are applied at the border certain rules become irrelevant as the various steps of the processing (submission of the application, the examination and the final decision on the application) are taken in swift succession.

Recommended best practice

A distinction should be made between:

(a) exceptional cases where a third-country national who intends to enter into the area of the Member States presents himself at the external border and wishes to apply for a visa there, and

(b) emergency cases where a large number of persons who did not intend to enter into the area of the Member States are forced to do so: *e.g. an aircraft with Frankfurt as destination has to land at Luxembourg airport because of weather conditions in Frankfurt; the passengers will be transferred to Frankfurt by bus; several hundreds of the passengers were only to transit*

through the international part of the airport in Frankfurt before continuing their trip to a destination in a third country; they are compelled to apply for a visa in Luxembourg.

In the first case (a), in principle all relevant rules in relation to the examination and decision making on visa applications apply, whereas in the second case (b) where the third country nationals concerned had no intention of entering into the territory of the Member States but are compelled to do so for reasons of force majeure, certain provisions may be deviated from, e.g. the visa fee may be waived.

The following general rules apply when an application is submitted at the border:

1.2.1 The basic elements of a visa application:

- Presentation of a filled in and signed application form. If the relevant authorities of the Member State concerned judge that given the circumstances (e.g. extreme urgency or large number of persons who need to be issued a visa within a short period of time), all the relevant data of the individual applicants may be entered directly into the national visa database, they can refrain from asking the individual persons to fill in the application form;
- Presentation of a valid travel document (Part II, point 3.1.1.);
- As a general rule, the travel document presented must be valid at least three months after the intended date of departure from the Member States, but since a visa is often applied for at the border in cases of urgency, a travel document that has a shorter period of validity may be accepted;
- Presentation of a photograph fulfilling the standards set out in the photographic specifications (Annex 11);
- Collection of biometric data, where applicable (Part II, Chapter 4);
- Collection of the visa fee (Part II, point 3.4.). The general rules on the visa fee set out in the Visa Code and in visa facilitation agreements apply at the external border. The 'urgency' fee of 70 EUR foreseen in some visa facilitation agreements cannot be applied at the external borders;
- Presentation of supporting documents, including proof of unforeseeable and imperative reasons for entry **(**in particular Part II, point 5.2);
- Presentation of proof of possession of adequate and valid travel medical insurance (Part II, point 5.3);

The requirement that the applicant be in possession of travel medical insurance may be waived when such travel medical insurance is not available at that border crossing point or for humanitarian reasons.

Recommended best practice in relation to the application form

The general rules in relation to the application form apply (point 3.2). As to the language versions available (point 3.2.1) at the border crossing points, the application form should as a minimum be available in the official language(s) of the Member State at whose border the

application is submitted and in an official language of the EU institutions, for example English.

1.3 What types of visas can be issued at the external border?

A visa issued at the external border shall be a uniform visa, entitling the holder to stay for a maximum duration of 15 days, depending on the purpose and conditions of the intended stay. In the case of transit, the length of the authorised stay shall correspond to the time necessary for the purpose of the transit.

A third-country national falling within a category of persons for whom prior consultation is required shall, in principle, not be issued a visa at the external border. However, a visa with limited territorial validity for the territory of the issuing Member State may be issued at the external border for such persons in exceptional cases (Part II, point 8.5.2.).

1.3.1 Filling in of the visa sticker

See Part II, Chapter 10, and Annex 20.

1.3.2 Information of central authorities of other Member States on the issuing of a visa

See Part II, Chapter 9.

1.3.3 Refusal of a visa applied for at the external border

Legal basis: Visa Code, Articles 32(1) and 35(6) and Annex VI

When an application has been examined and it has been established that the entry conditions for obtaining a uniform visa are fulfilled, a uniform visa may be issued.

In case the entry conditions are not fulfilled, it should be assessed whether the circumstances justify that derogation is exceptionally made from the general rule, and a visa with limited territorial validity may be issued (Part II, point 8.5.2.). If it is not considered justified to derogate from the general rule, the visa shall be refused.

Additionally, the visa shall be refused at the border, if the applicant cannot provide proof of unforeseeable and imperative reasons for entry.

A distinction should be made between refusal of entry and refusal of a visa at the border. The rules on refusal of entry are set out in the Schengen Borders Code whereas the rules on refusal of a visa are set out in the Visa Code.

1.3.4 On which grounds should a visa be refused?

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

1. the applicant has presented a travel document which is false, counterfeit or forged;

2. justification for the purpose and conditions of the intended stay was not provided;

3. the applicant did not provide proof of sufficient means of subsistence, both for the duration of the intended stay and for the return to his country of origin or residence, or for the transit to a third country into which he is certain to be admitted;

4. the applicant does not provide proof that he is in a position to lawfully acquire sufficient means of subsistence, for the duration of the intended stay and for the return to his country of origin or residence, or for the transit to a third country into which he is certain to be admitted;

5. the applicant has already stayed for 90 days during the current 180-day period on the territory of the Member States on the basis of a uniform visa or a visa with limited territorial validity;

6. the applicant is a person for whom an alert has been issued in the SIS for the purpose of refusing entry; *in this case the Member State concerned shall be added;*

7. the applicant is considered to be a threat to public policy or internal security by one or more Member States;

8. the applicant is considered to be a threat to public health of one or more Member States;

9. the applicant is considered to be a threat to the international relations of one or more the Member States;

10. the information submitted regarding the justification for the purpose and conditions of the intended stay was not reliable;

11. there are reasonable doubts as to the reliability as regards ….. ; *to be specified;*

12. there are reasonable doubts as to the reliability, as to the authenticity of the supporting documents submitted or as to the veracity of their contents;

13. there are reasonable doubts as to the applicant's intention to leave the territory of the Member States before the expiry of the visa;

14. sufficient proof that the applicant has not been in a position to apply for a visa in advance, justifying the application for a visa at the border, is not provided;

15. the applicant does not provide justification for the purpose and conditions of the intended airport transit;

16. does not provide proof of holding adequate and valid travel medical insurance, where applicable.

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

1.3.5 Should the refusal be notified to the person concerned and should the grounds for the refusal of a visa be given?

Legal basis: Visa Code, Articles 32(2), (3), (4) and 35(7) and Annex VI

When refusing a visa to an applicant, the border control authority must fill in the standard form for notifying and motivating refusal of a visa substantiating the reason(s) for refusal, and submit it to the third-country national concerned (Annex 25).

1.3.6 Information to be added in the VIS when a visa is refused

See Part II, point 11.3.

1.3.7 Transitional guidelines regarding the action to be carried out in VIS when a visa is refused

See Part II, point 11.3.1.

2. VISAS ISSUED TO SEAFARERS IN TRANSIT AT THE EXTERNAL BORDER

A 'seafarer' means any person who is employed, engaged or works in any capacity on board a ship in maritime navigation or a ship navigating in international inland waters.

A seafarer may be issued a visa at the external borders for the purpose of transit, if for unforeseeable and imperative reasons he has not been in a position to apply for a visa in advance, and the reason for crossing the border is to embark on or to transfer from a ship that entered a port of a Member States to exit the territory of Member States on board another ship leaving from a port of another Member State.

It should be noted that for this particular category of persons, 'unforeseeable and imperative' reasons for entry are more frequent than for other types of travellers because of unforeseeable changes, due to for instance weather conditions, of schedules of the ship on which the seafarer is to embark on or disembark from.

However, Member States should keep in mind that seafarers can apply for visas 9 months in advance of the intended date of travel (point 2.1), which should limit the need to issue visas at the external border.

Examples of unforeseeable and imperative reasons for entry and consequently application for a visa at the border:

- *A seafarer is told by his shipping agent that he has to embark on a ship in the harbour of Rotterdam (Netherlands) on the 4 November. He receives this message on 1 November, while he is still working on another ship. He will disembark from this ship on 2 November and will travel by plane to the Netherlands on 3 November.*
- *A seafarer from the Philippines, living in a small village on an island some hundred kilometres from the embassy, is told by his shipping agent on 1 May that he has to embark on a ship in the harbour of Rotterdam (Netherlands) which is leaving the harbour on 8 May.*
- *A shipping agent requires a seafarer to embark on a ship in the harbour of Rotterdam on the 4 November. He receives this message on 1 November, while he is still working on another ship bound for Piraeus (Greece) on 2 November. He therefore applies for a visa at the external border of Greece where he will enter the territory of the Member States before taking a flight to the Netherlands.*

– *A seafarer from the Philippines is told on 25 October that he will be joining a ship in the United Kingdom on 1 November. However, due to severe weather conditions, the vessel was diverted to Le Havre (France). In this case the seafarer may apply for a visa at the French border.*

– *An Indian seafarer arrives with a ship in Barcelona (Spain) and is due to disembark the ship and fly home to enjoy leave time after having completed his contractual time to work on board the ship. The Spanish consulate in Mumbai would not have been able to handle the seafarer's application before his departure to the ship as at that time it was not yet known that the seafarer would disembark in Spain He therefore had no other option than to apply for a visa at the external border of Spain before disembarking the ship in Spain to fly home.*

Examples where the seafarer cannot prove unforeseeable and imperative reasons for entry and consequently an application for a visa at the border:

– *A seafarer from the Philippines, living in a small village on an island a few hundred kilometres from the embassy, works on a cruise ship with a regular schedule which leaves from the harbour of Rotterdam (Netherlands) every three months on the same day and time.*

– *A seafarer from the Philippines, living in a small village on an island a few hundred kilometres from the embassy, is told by his shipping agent on 1 May that he has to embark on a ship in the harbour of Rotterdam (Netherlands) which is leaving the harbour on 28 May.*

Before issuing a visa at the border to a seafarer, the competent national authorities must exchange information in compliance with the operational instructions set out in Annex 26 [108].

The general rules in relation to the type of visas to be issued at the external borders apply in the case of seafarers, but the specific nature of the work of seafarers should be taken into consideration by allowing a certain margin when determining the duration of authorised stay and validity period of the visa.

Recommended best practice
in relation to the issue of visas at the external border to seafarers in transit

A seafarer arrives by plane on 1 November at Brussels airport (Belgium) in order to embark on a vessel scheduled to arrive in the port of Antwerp (Belgium) on 3 November. Given that the vessel could be delayed, a few days of margin should be added to the period of authorised stay and validity of the visa.

[108] Commission Implementing Decision C(2020)64 establishing the operational instructions for issuing visas at the external borders to seafarers.

PART V: MODIFICATION OF ISSUED VISAS

1. EXTENSION OF AN ISSUED VISA

Legal basis: Visa Code, Article 33

In case a visa holder who is already present on the territory of the Member States is unable to leave before the expiry of his/her visa for reasons of *force majeure*, humanitarian reasons or serious personal reasons, he/she should address the request for extension of the visa to the competent authorities of the Member State where he/she is present even if that is not the Member State whose consulate issued the visa.

Under certain circumstances the authorities of the Member State concerned are obliged to extend the visa (point 1.1) and in other cases they may decide to extend the visa (point 1.3).

1.1 Under which circumstances is it mandatory to extend an issued visa?

The period of validity of an issued visa and/or the duration of stay allowed for shall be extended where the competent authority of a Member State considers that the visa holder has provided proof of *force majeure* or humanitarian reasons preventing him from leaving the territory of the Member States before the expiry of the period of validity of the visa or the duration of stay authorised by the visa.

***Example** of reason of force majeure:*

- last minute change of flight schedule by airline (e.g. due to weather conditions, strike)

***Examples** of humanitarian reasons:*

- sudden serious illness of the person concerned (meaning that the person is unable to travel) or sudden serious illness or death of a close relative living in a Member State;

- on a case-by-case basis, upon decision of the competent Member State, sudden serious threats against human rights defenders in their country of origin, for example, following an intervention at a conference abroad.

According to the VFAs, it is mandatory to extend only for reasons of *force majeure* and not for 'humanitarian reasons'. Nevertheless, third country nationals covered by these VFAs also benefit from the more generous provisions of the Visa Code.

1.2 Can a fee be charged for the extension of a visa for reasons of force majeure or for humanitarian reasons?

In case of an extension of a visa for reasons of *force majeure* or for humanitarian reasons, no fee can be charged.

1.3 Under which circumstances is it not mandatory to extend an issued visa?

The period of validity and/or the duration of stay of an issued visa may be extended if the visa holder provides proof of serious personal reasons justifying the extension of the period.

***Examples of** serious personal reasons justifying an extension of a visa*

- a Namibian national has travelled to Cologne (Germany) to collect a family member who has undergone an operation. The day before the scheduled departure, the patient has a relapse and is only allowed to leave the hospital two weeks later.

- an Angolan businessperson has travelled to Italy to negotiate a contract with an Italian company and to visit several production sites in Italy. Negotiations take longer than expected and the Angolan national has to stay one week longer than intended.

***Examples of** personal reasons not justifying the extension of a visa:*

- a Bolivian national has travelled to Sweden to participate in a family event. At this event he meets an old friend and would like to prolong his stay for another two weeks.

1.3.1 Can a fee be charged for the extension of a visa for serious personal reasons?

In the case of an extension of a visa for serious personal reasons, a fee of 30 EUR should be charged.

1.4 Should prior consultation be carried out before taking a decision on extending a visa?

If the visa holder applying for an extension of his/her visa has the nationality of a third country or belongs to a category of such nationals for whom a Member State requires "prior consultation", such consultation should not be carried out again. Since such consultation has been carried out before the issuance of the original visa, it can be assumed that the result of this consultation remains valid.

1.5 What should be the territorial validity of an extended visa?

Generally, the extension should allow the holder to travel to the same territory as the one covered by the initial visa. However, the authorities of the Member State responsible for the extension may limit the territorial validity of the extended visa. The contrary can never be the case, i.e. a visa that originally had a limited territorial validity cannot be extended to allow a stay in the entire territory of the Member States.

1.6 What should be the period of stay allowed for by an extended visa?

Generally, the extension of a visa should not result in a total stay going beyond 90 days in any 180-day period.

1.7 What form should the extension take?

Legal basis: Visa Code, Articles 27 and 33(6) and Annex X

Extension of visas shall take the form of a visa sticker in the uniform format (Annex 19) and the sticker should be filled in accordance with Chapter 10 and Annex 20.

1.8 What should be verified when assessing a request for an extension of a visa?

If the competent authority considers that the reasons provided for requesting an extension of a visa are sufficient, the following should be verified:

- is the applicant's travel document still valid for 3 months beyond the intended date of departure?
- does the applicant possess sufficient means of subsistence for the additional period of stay?
- has the applicant presented proof of travel medical insurance for the additional period of stay?

All relevant conditions for obtaining the original visa should still be met.

When a visa has been extended, the relevant data shall be entered into VIS.

2. ANNULMENT OF AN ISSUED VISA

Legal basis: Visa Code, Article 34 and Annex VI

A visa shall be annulled where it becomes evident that the conditions for issuing it were not met at the time when it was issued, in particular if there are serious grounds for believing that the visa was fraudulently obtained.

A visa shall in principle be annulled by the competent authorities of the Member State which issued it. A visa may be annulled by the competent authorities of another Member State, in which case the authorities of the Member State that issued the visa shall be informed of such annulment.

Example: *A national of Mongolia holding a single entry visa issued by the Italian consulate in Ulaanbaatar arrives at Brussels airport (Belgium) and has no proof of a connecting flight from Brussels to an Italian airport or a solid explanation justifying his being there.*

It may be assumed that this visa was fraudulently obtained and the Belgian authorities should annul the visa and inform the Italian authorities of this.

Example: *An Indian national holding a multiple entry visa for 90 days issued by the Italian consulate in Delhi for the purpose of attending a summer course at an Italian university is working illegally in Germany at a restaurant. The financial control authority on illegal employment conducts an investigation and reveals his activity.*

In this case the German authorities should annul his visa.

2.1 Grounds for annulment

Failure of the visa holder to produce one or more of the supporting documents referred to in point 5.2.1 or failure to prove, when presenting himself at the border, the possession of sufficient means of subsistence shall not automatically lead to a decision to annul the visa, especially if the visa has been issued by another Member State, but the entry should be refused.

Example: *A Vietnamese national holding a multiple entry visa issued (for business purposes) by the Polish consulate in Hanoi (Vietnam) flies from Hanoi to Rome (Italy) with the purpose*

of tourism. He cannot prove the possession of sufficient means of subsistence for staying in Italy. It is obvious that he has already used his visa for business purposes in Poland and the visa is still valid.

In this case the visa should not be annulled but entry should be refused.

If the visa holder cannot prove the purpose of his/her journey when checked at the border, a further enquiry must be made in order to assess whether the person obtained the visa in a fraudulent way and represents a risk in terms of illegal immigration. If necessary, contacts with the competent authorities of the Member State having issued the visa will be taken. Only if it is ascertained that the visa was obtained in a fraudulent way, such a visa must be annulled.

2.2 How should the annulment be marked?

If a visa is annulled, a stamp stating "ANNULLED" shall be affixed to it and the optical variable feature of the visa sticker, the security feature "latent image effect" as well as the term "visa" shall be rendered unusable by using a sharp instrument. The aim is to prevent the optical variable feature from being removed from the visa sticker and from being misused.

***Recommended best practice in relation to the language(s) used for the stamp and information of annulment of a visa*:**

In order for the relevant authorities of all Member States to understand the meaning of the stamp, the word "annulled" could be indicated in the national language(s) of the Member State carrying out the annulment and for instance in English**.** See also point 4.

2.3 Should annulled visa be entered into the VIS?

When a visa has been annulled, the relevant data shall be entered into the VIS.

Regarding the actions to be carried out in VIS, see Annex 32.

2.4 Should the annulment be notified to the person concerned and should the grounds for the annulment be given?

When a visa has been annulled, the competent authorities must fill in the standard form for notifying and motivating the annulment of a visa substantiating the reason(s) for the annulment, and submit it to the third-country national concerned (Annex 25).

Recommended best practice: When a Member State has annulled a visa issued by another Member State, it is recommended to forward the information by means of the form set out in Annex 30.

2.5 Does the person concerned have the right to appeal a decision on annulment?

Persons whose visa has been annulled shall have the right to appeal. Appeals shall be conducted against the Member State that has taken the decision on annulment. When notifying the annulment to the person concerned, complete information regarding the

procedure to be followed in the event of an appeal should be given. It must be ensured that the person concerned is granted the right to an effective judicial remedy, as stemming from Article 47 of the European Charter of Fundamental Rights and as confirmed by case law[60], notably by informing the person concerned of the possibility to seek review before a court.

3. REVOCATION OF AN ISSUED VISA

Legal basis: Visa Code, Article 34 and Annex VI

A visa shall be revoked when it becomes evident that the conditions for issuing it are no longer met. A visa shall in principle be revoked by the competent authorities of the Member State which issued it. A visa may be revoked by the competent authorities of another Member State, in which case the authorities of the Member State that issued the visa shall be informed of such revocation.

If a consulate suspects that the holder of a visa no longer fulfils the conditions, it should thoroughly investigate the circumstances and ensure that an adequate threshold of documentary evidence is reached before deciding to revoke the visa. Circumstantial evidence such as cancelled hotel or airline reservations, on its own, is not sufficiently reliable evidence to revoke the visa. In such cases, consulates should consider contacting the visa holder for an explanation of the change in travel plans before deciding whether a revocation is warranted.

Example: *A visa must be revoked at the border if the holder of the visa has become the subject of an alert in the Schengen Information System (SIS), since the visa was issued.*

In line with Communication from the Commission providing guidelines on general visa issuance in relation to Russian applicants[109], Member States should revoke visas that were issued to Russian citizens subject to EU restrictive measures, based on a re-examination of the individual situation, in line with provisions of the Visa Code (Articles 34(2) and Article 21(3), point (c)). Information on a revoked visa is to be entered into the VIS and the visa holder is to be notified of the revocation.

A visa may be revoked at the request of the visa holder. Such a request should be made in writing. The competent authorities of the Member States that issued the visa shall be informed of such revocation.

3.1 Grounds for revocation

Failure of the visa holder to produce, one or more of the supporting documents referred to in Part II, point 5.2, or failure to prove, the possession of sufficient means of subsistence shall

[109] Communication from the Commission providing guidelines on general visa issuance in relation to Russian applicants following Council Decision (EU) 2022/1500 of 9 September 2022 on the suspension in whole of the application of the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation, C(2022) 6596

not automatically lead to a decision to revoke the visa, especially if the visa has been issued by another Member State.

3.2 How should revocation be marked?

If a visa is revoked, a stamp stating "REVOKED" shall be affixed to it and the optical variable feature of the visa sticker, the security feature 'latent image effect' as well as the term "visa" shall be rendered unusable by using a sharp instrument. The aim is to prevent the optical variable feature from being removed from the visa sticker and from being misused.

Recommended best practice in relation to the language(s) used for the stamp and information of revocation of a visa:

In order for the relevant authorities of all Member States to understand the meaning of the stamp, the word "revoked" could be indicated in the national language(s) of the Member State carrying out the revocation and for instance in English. See also point 4.

3.3 Should data on a revoked visa be entered into the VIS?

When a visa has been revoked, the relevant data shall be entered into the VIS.

Regarding the actions to be carried out in VIS (Annex 32).

3.4 Should the revocation be notified to the person concerned and should the grounds for the revocation be given?

When a visa has been revoked, the competent authorities must fill in the standard form for notifying and motivating the revocation of the visa substantiating the reason(s) for the revocation, and submit it to the third-country national concerned (Annex 25).

Recommended best practice: When a Member State has revoked a visa issued by another Member State it is recommended to forward the information by means of the form set out in Annex 31.

3.5 Does the person concerned have the right to appeal a revocation?

Persons whose visa has been revoked shall have the right to appeal, unless the revocation was carried out at the request of the visa holder. An appeal shall be conducted against the Member State that has revoked the visa. When notifying the revocation to the person concerned, complete information regarding the procedure to be followed in the event of an appeal should be given. It must be ensured that the person concerned is granted the right to an effective judicial remedy, as stemming from Article 47 of the European Charter of Fundamental Rights and as confirmed by case law[60], notably by informing the person concerned of the possibility to seek review before a court.

4. TRANSLATIONS OF "ANNULLED" AND "REVOKED"

EN	ANNULLED	REVOKED
BG	АНУЛИРАНА	ОТМЕНЕНА

ES	ANULADO	RETIRADO
CS	NEPLATNÉ	ZRUŠENO
DA	ANNULLERET	INDDRAGET
DE	ANNULLIERT	AUFGEHOBEN
ET	TÜHISTATUD	KEHTETUKS TUNNISTATUD
EL	ΚΑΤΑΡΓΕΙΤΑΙ	ΑΝΑΚΑΛΕΙΤΑΙ
FR	ANNULÉ	ABROGÉ
HR	PONIŠTENO	UKINUTO
IT	ANNULLATO	REVOCATO
LV	ANULĒTA	ATCELTA
LT	PANAIKINTA	ATŠAUKTA
HU	MEGSEMMISÍTVE	VISSZAVONVA
MT	ANNULLATA	REVOKATA
NL	NIETIG VERKLAARD	INGETROKKEN
PL	UNIEWAŻNIONO	COFNIĘTO
PT	ANULADO	REVOGADO
RO	ANULAT	REVOCAT
SK	ZRUŠENÉ	ODVOLANÉ
SL	RAZVELJAVLJENO	PREKLICANO
FI	MITÄTÖN	KUMOTTU
SV	UPPHÄVD	ÅTERKALLAD
NO	ANNULLERT	INNDRATT

PART VI: LIST OF RELEVANT LEGISLATION

UNION LAW

- Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen on 19 June 1990 (OJ L 239, 22.9.2000, p. 19, ELI: http://data.europa.eu/eli/convention/2000/922/oj);
- 94/795/JHA: Council Decision of 30 November 1994 on a joint action adopted by the Council on the basis of Article K.3.2.b of the Treaty on European Union concerning travel facilities for school pupils from third countries resident in a Member State (OJ L 327, 19.12.1994, p. 1, ELI: http://data.europa.eu/eli/dec/1994/795/oj);
- Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 164, 14.7.1995, p. 1, ELI: http://data.europa.eu/eli/reg/1995/1683/oj) as amended by Regulation (EU) 2017/1370 of the European Parliament and of the Council of 4 July 2017 amending Council Regulation (EC) No 1683/95 laying down a uniform format for visas (OJ L 198, 28.7.2017, p. 24, ELI: http://data.europa.eu/eli/reg/2017/1370/oj);
- Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, p. 391);
- Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 303 of 28.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1806/oj);
- Council Regulation No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1, ELI: http://data.europa.eu/eli/reg/2002/1030/oj);
- Council Regulation (EC) No 693/2003 of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual (OJ L 099, 17.4.2003, p. 8, ELI: http://data.europa.eu/eli/reg/2003/693/oj);
- Council Regulation (EC) No 694/2003 of 14 April 2003 on uniform formats for Facilitated Transit Documents (FTD) and Facilitated Rail Transit Documents (FRTD) provided for in Regulation (EC) No 693/2003 (OJ L 99, 17.4.2003, p. 15, ELI: http://data.europa.eu/eli/reg/2003/694/oj));
- Council Decision of 8 March 2004 concerning the conclusion of the Memorandum of Understanding between the European Community and the National Tourism Administration of the People's Republic of China on visa and related issues concerning tourist groups from the People's Republic of China (ADS) (OJ L 83, 20.3.2004, p. 12);

– Directive 2004/38/EC of the European Parliament and the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77, ELI: http://data.europa.eu/eli/dir/2004/38/oj);

– Decision No 896/2006 of the European Parliament and of the Council of 14 June 2006 establishing a simplified regime for the control of persons at the external borders based on the unilateral recognition by the Member States of certain residence permits issued by Switzerland and Liechtenstein for the purpose of transit through their territory (OJ L 167, 20.6.2006, p. 8, ELI: http://data.europa.eu/eli/dec/2006/896(2)/oj);

– Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention (OJ L 405, 30.12.2006, p. 1, ELI: http://data.europa.eu/eli/reg/2006/1931/oj);

– Decision No 565/2014/EU of the European Parliament and of the Council of 15 May 2014 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for the purposes of transit through or intended stays on their territories not exeeding 90 days in any 180-days period and repealing Decisions No 895/2006/EC and No 582/2008/EC (OJ L 157, 27.5.2014, p. 23, ELI: http://data.europa.eu/eli/dec/2014/565(2)/oj);

– Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1, ELI: http://data.europa.eu/eli/reg/2009/810/oj);

– Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa (OJ L 85, 31.3.2010, p. 1, ELI: http://data.europa.eu/eli/reg/2010/265/oj);

– Regulation (EU) 2016/399 of 9 March 2016 of the European Parliament and of the Council establishing a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/399/oj);

– Regulation (EU) 2019/1157 of 20 June 2019 of the European Parliament and of the Council on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement (OJ L 188, 12.7.2019, p. 67, ELI: http://data.europa.eu/eli/reg/2019/1157/oj);

– Decision (EU) 2022/2512 of the European Parliament and of the Council of 14 December 2022 on the non-acceptance of travel documents of the Russian Federation issued in Ukraine and Georgia (OJ L 326, 21.12.2022, p. 1, ELI: http://data.europa.eu/eli/dec/2022/2512/oj);

– Regulation (EU) 2023/2667 of the European Parliament and of the Council of 22 November 2023 amending Regulations (EC) No 767/2008, (EC) No 810/2009 and (EU) 2017/2226 of the European Parliament and of the Council, Council Regulations (EC) No 693/2003 and (EC) No 694/2003 and Convention implementing the Schengen Agreement, as regards the digitalisation of the visa procedure (OJ L, 2023/2667, 07.12.2023, ELI: http://data.europa.eu/eli/reg/2023/2667/oj).

INTERNATIONAL LAW

– Convention of 7 December 1944 on International Civil Aviation (ICAO Convention, Annex 2, 9;

– European Convention for the Protection of Human Rights of 4 November 1950 and its Protocols;

– ILO Convention on Seafarers' Identity Documents (No 185) of 19 June 2003;

– Agreement between the European Community and its Member States, of one part, and the Swiss Confederation, of the other, on the free movement of persons, AFMP (OJ L 114, 30.4.2002, p. 6);

– Council Decision 2007/840/EC of 29 November 2007 on the conclusion of the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas (OJ L 332, 18.12.2007, p. 68);

– Council Decision 2007/340/EC of 19 April 2007 on the conclusion of the Agreement between the European Community and the Russian Federation on the facilitation of issuance of short-stay visas (OJ L 129, 17.5.2007, p. 27);

– Council Decision 2007/821/EC of 8 November 2007 on the conclusion of the Agreement between the European Community and the Republic of Albania on the facilitation of the issuance of visas (OJ L 334, 19.12.2007, p. 85);

– Council Decision 2007/822/EC of 8 November 2007 on the conclusion of the Agreement between the European Community and Bosnia and Herzegovina on the facilitation of the issuance of visas (OJ L 334, 19.12.2007, p. 97);

– Council Decision 2007/823/EC of 8 November 2007 on the conclusion of the Agreement between the European Community and the Republic of Montenegro on the facilitation of the issuance of visas (OJ L 334, 19.12.2007, p. 109);

– Council Decision 2007/824/EC of 8 November 2007 on the conclusion of the Agreement between the European Community and the former Yugoslav Republic of Macedonia on the facilitation of the issuance of visas (OJ L 334, 19.12.2007, p. 125);

– Council Decision 2007/825/EC of 8 November 2007 on the conclusion of the Agreement between the European Community and the Republic of Serbia on the facilitation of the issuance of visas (OJ L 334, 19.12.2007, p. 137);

– Council Decision 2007/827/EC of 22 November 2007 on the conclusion of the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas (OJ L 334, 19.12.2007, p. 169);

– Council Decision 2011/117/EU of 18 January 2011 on the conclusion of the Agreement between the European Union and Georgia on the facilitation of the issuance of visas (OJ L 52 25.2.2011, p 34);

– Council Decision No 2013/296/EU of 13 May 2013 on the conclusion of the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas (OJ L 168, 20.6.2013, p. 3);

– Council Decision No 2013/297/EU of 13 May 2013 on the conclusion of the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas (OJ L 168, 20.6.2013, p. 11);

– Council Decision No 2013/521/EU of 7 October 2013 on the conclusion of the Agreement between the European Union and the Republic of Cape Verde on facilitating the issue of short-stay visas to citizens of the Republic of Cape Verde and of the European Union (OJ L 282, 24.10.2013, p. 3);

– Council Decision No 2013/628/EU of 22 October 2013 on the conclusion of the Agreement between the European Union and the Republic of Armenia on the facilitation of the issuance of visas (OJ L 289, 31.10.2013, p. 2);

– Council Decision No 2014/242/EU of 14 April 2014 on the conclusion of the Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas (OJ L 128, 30.4.2014, p. 47, ELI: http://data.europa.eu/eli/dec/2014/242/oj);

– Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 7, ELI: http://data.europa.eu/eli/treaty/withd_2020/sign);1–177;

– Council Decision (EU) 2020/752 of 27 May 2020 on the conclusion of the Agreement between the European Union and the Republic of Belarus on the facilitation of the issuance of visas (OJ L 180, 9.6.2020, page 1, ELI: http://data.europa.eu/eli/dec/2020/752/oj););

– Council Decision (EU) 2021/1940 of 9 November 2021 on the partial suspension of the application of the Agreement between the European Union and the Republic of Belarus on the facilitation of the issuance of visas (OJ L 396, 10.11.2021, p. 58, ELI: http://data.europa.eu/eli/dec/2021/1940/oj58);

– Council Decision (EU) 2022/1500 of 9 September 2022 on the suspension in whole of the application of the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation (OJ L 234I, 9.9.2022, p. 1, ELI: http://data.europa.eu/eli/dec/2022/1500/oj).1–3).'