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ANNEX

ANNEX

to the

Commision Implementing Decision

establishing the Handbook for the administrative management of visa processing and local Schengen cooperation (Visa Code Handbook II) and repealing Commission Decision C(2010) 3667

Annex

“ANNEX

HANDBOOK FOR THE ADMINISTRATIVE MANAGEMENT OF VISA PROCESSING AND LOCAL SCHENGEN COOPERATION (Visa Code Handbook II)

FOREWORD

This Handbook contains guidelines for organising visa sections and local Schengen cooperation. It is to be used for the implementation of European Union legislation on the common visa policy by Member States' central and consular authorities in charge of the administrative management of visa processing and ensuring cooperation between Member States' authorities, at central and local level.

This Handbook has been drawn up pursuant to Article 51 of the Visa Code. It does not create any legally binding obligations on Member States, nor does it establish any new rights or obligations for the persons who might be concerned by it. Only those legal acts on which the Handbook is based, or to which it refers, produce legally binding effects and can be invoked before a national jurisdiction.

PART I: ORGANISATION AND INFORMATION TO BE GIVEN TO THE PUBLIC

1. The organisation of visa sections

Legal basis: Visa Code[1], Article 13 (6) and Article 37

1.1. Division of tasks and protection of staff

To maintain vigilance levels and protect staff from being exposed to local pressure, rotation schemes must be set up for staff dealing directly with applicants, where appropriate (see also Section 1.2).

Member States must pay particular attention to ensure well-defined work structures and a clear allocation/division of responsibilities for those taking decisions on applications. Member States should also consider rotation of decision-making staff after several years of carrying out the same tasks.

Biometric identifiers must be collected by qualified and duly authorised staff. Only a limited number of duly authorised staff may be authoritsed to (i) enter data in the Visa Information System; (ii) consult the Visa Information System (VIS); (iii) consult the Schengen Information System (SIS); and (iv) have access to other confidential information. This precludes giving full access rights to the VIS and the SIS to all local staff unless they are processing a visa application**.** Appropriate measures must be taken to prevent unauthorised access to these databases.

When organising the work and determining the division of tasks, it should be kept in mind that locally employed staff do not have the same employment status as permanent expatriate staff. Nor do locally employed staff have the level of training expatriate staff are required to have. Locally employed staff do not enjoy diplomatic immunity, and could thus be exposed more easily to pressure at local level. It is therefore important to ensure that the consulates have sufficient expatriate staff members (or as a minimum, staff with Union nationality subject to regular rotation) with relevant training and sufficient expertise to supervise the work of locally employed staff.

1.2. Resources for examining applications and monitoring visa procedures

Legal basis: Visa Code, Article 4(1a) and Article 38

Member States must have a sufficient number of appropriate staff to **(i)** carry out tasks relating to the examination of applications; (ii) ensure that the public receives a reasonable and harmonised quality of service; (iii) comply with the deadlines for taking decisions on visa applications, irrespective of how the collection of visa applications is organised. The deployment of resources must take account of seasonal peaks in demand.

Member States should consider a range of possible options when capacity must be increased. Those options could include adding staff and taking organisational measures.

[1] 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).

Premises must be functional and adequate and appropriate security measures must be arranged.

Member States' central authorities must provide adequate training for both expatriate and locally employed staff. The central authorities are responsible for providing staff with complete, accurate and up-to-date information on the relevant Union and national legislation. Member States' central authorities must make sure that the examining of applications is subject to frequent and appropirate monitoring. If they detect any deviations from the provisions of the Visa Code, corrective measures should be taken.

To ensure the integrity of all stages of the visa procedure Member States must ensure that expatriate staff monitors the entire visa procedure in consulates. This monitoring should cover (i) the lodging and handling of applications; (ii) the printing of visa stickers; (iii) the practical cooperation with external service providers on the secure transfer and registration of application files; and (iv) and the return of travel documents.

To avoid any risk to the independence of the decision-making process, two precautions are necessary. Firstly, the examination of visa applications must be conducted under the (effective) control of expatriate staff (i.e. officials of the Member States' central government administration who are subject of regular rotation and who have a corresponding civil service employment status and an appropriate level of training). Secondly, expatriate staff must be responsible for the final decisions. To this end, expatriate staff (including in case of regionalised decision making) should have a sufficient level of knowledge of the main or common language of the host country so that they are not entirely dependent on local staff when examining applications.

For centralised decision making, Member States must provide training for central authority staff involved in the decision making on applications. Member States must also ensure that central authority staff have (i) sufficient and up-to-date country-specific knowledge of local circumstances (including relevant information on specific issues exchanged in local Schengen cooperation); (ii) a sufficient level of language skills; and (iii) complete, accurate and up-to-date information on the relevant Union and national legislation.

1.3. Storage and handling of blank visa stickers

Adequate security measures must be in place for the storage and handling of visa stickers to prevent fraud or loss. Consulates must keep an account of their stock of visa stickers and record how each visa sticker is used.

Recommended best practice for the stock keeping and registration of blank visa stickers: Member States' consulates should keep an electronic account of their stock of blank visa stickers and register electronically the use of each visa sticker.

Any significant loss of of blank visa stickers must be reported to the Commission.

Recommended best practice for notification of the loss of blank visa stickers: Member States' central authorities should notify any single loss (including theft) of 10 blank visa stickers or more to the Commission.

2. Accreditation of commercial intermediaries

Legal basis: Visa Code, Article 45

Member States may cooperate with commercial intermediaries for the lodging of applications, provided those commercial intermediaries are accredited. Commercial intemediaries must not be involved in the collection of biometric identifiers.

2.1. Procedures for granting accreditation

Cooperation with a commercial intermediary must be based on accreditation granted by a Member State's relevant authorities. Accreditation must be granted only once the following aspects have been verified:

- the current status of the commercial intermediary (current licence, commercial register and contracts with banks);
- existing contracts between the commercial intermediary and commercial partners based in the Member States offering accommodation and other package tour services;
- contracts between the commercial intermediray and transport companies, which must include both an outward journey and a guaranteed and fixed return journey.

Recommended best practice for the accreditation of commercial intermediaries*:* The conditions and procedures for obtaining accreditation should be published to avoid distortions of competition and allow equal access between different intermediaries.

2.2. Monitoring

Spot checks must be carried out regularly on accredited commercial intermediaries by means of personal or telephone interviews with applicants. These checks should cover (i) itineraries and accommodation; (ii) adequate travel medical insurance for individual travellers and; (iii) wherever deemed necessary, verification of the documents on group return (see also the *Visa Code Handbook (I) for the processing of visa applications and the modification of issued visas, Part II, point 6.17*).

2.3. Withdrawal of accreditation

Member States' relevant authorities must withdraw accreditation from a commercial intermediary if they consider that the intermediary no longer meets the required conditions.

Recommended best practice: At least once a year, Member States' relevant authorities should evaluate their cooperation with accredited commercial intermediaries and renew or withdraw accreditation accordingly. That information should be published on the website immediately and communicated to the external service provider, if the Member State cooperates with one.

2.4. Exchange of information

Within local Schengen cooperation, Member States must exchange information on the experience with (and the performance of) accredited commercial intermediaries. Examples of that information include: any irregularities detected; trends in refusals of applications

submitted by commercial intermediaries; any document fraud detected; or failure to carry out scheduled trips. Information must also be shared on reasons for withdrawal of accreditation.

2.5. Approved Destination Status (ADS)[2]

On 12 February 2004, the European Community and the National Tourism Administration of the People's Republic of China (CNTA) signed a Memorandum of Understanding (MoU) on visas and related issues[3] to facilitate Chinese group tourism to the Member States. The MoU has been implemented since 1 September 2004. Denmark, Iceland, Norway and Switzerland have concluded separate ADS agreements with CNTA.

The MoU contains specific provisions on the accreditation, monitoring and possible sanctioning of travel agencies under the ADS scheme.

On 16 September 2004 the Commission issued a Recommendation on the implementation of the MoU[4], in which it proposed common implementation procedures for the MoU covering (i) the accreditation of travel agencies; (ii) couriers' identification badges; (iii) practical arrangements on cooperation travel agencies' couriers, and (iv) the warnings and withdrawals that can be imposed on travel agencies. Under that Recommendation, the Union delegation is responsible for drawing up and updating the list of accredited couriers and for informing the Chinese authorities of any sanctions imposed on travel agencies.

Member States should ensure that the public is informed of that list of travel agencies that are authorised to submit ADS applications (see Section 3.1).

3. General information to be provided to applicants

Legal basis: Visa Code, Articles 47 and 48

In addition to informing the public on the general visa requirements for entry into the territory of the Member States and/or for transit through the international transit areas of Member States' airports, Member States' central authorities and consulates must provide the public with all the other relevant information for visa applications.

Information on the criteria, conditions and procedures for applying for a visa must be provided and includ**e**:

- The Member State competent for examining and taking a decision on the visa application (and information on representation of another Member State, if relevant).
- Whether an appointment system is in place, and if so, how and when an appointment can be obtained.
- Where and when the application may be submitted (at the consulate of the competent Member State or representing Member State, at an external service provider or an honorary consul).
- The documents to be submitted when applying for a visa.
- What the 'admissibility' criteria are.

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2 Only relevant for China.
3 OJ L 83, 20.3.2004, p 14.
4 OJ L 296, 21.9.2004, p. 23.

- That fingerprints are, in principle, only to be colleced every 59 months. It is recommended that applicants be made aware that it is important for applicants to give accurate information about any previous collection of fingerprints.
- If applications are collected by an external service provider, both the Member State's consulate and the external service provider should make information available on the mandatory service fee to be paid. This information should clearly distinguish the mandatory service fee from fees for any optional services, and make applicants aware of the possibility of submitting the application directly at the Member State's consulate, if relevant.
- The visa fee: information on which fees are to be paid by which categories of applicants, and the categories of applicants for which the fee is waived. Information must also be given on the currency in which the fee must be paid and the accepted means of the payment. It should be explicitly indicated that if the applicaton is refused, the fee will not be reimbursed.
- Whether the application can be submitted through an accredited commercial intermediary, such as a travel agency. Similarly, an updated list of accredited commercial intermediaries should be published, if relevant;
- The maximum time limits for examining and taking a decision on a visa application;
- The list of third countries whose nationals or specific categories of nationals are subject to prior consultation.
- The facilitations to be granted to family members of Union/EEA and Swiss citizens.
- Information on which personal data of applicants that are processed for what purpose by which authorities during the application process and otherwise.
- Information about the data subject's right to access, rectification and erasure and right to complaint to the data protection authority, in case the data subject considers that his or her data have been unlawfully processed.

Recommended best practice in providing information to visa applicants: To avoid the submission of incomplete visa applications and applicants being obliged to come several times to the external service provider or the consulate, all relevant information should be disseminated as widely as possible. General information about visas, and more specific information on how to apply for a visa, should be available in several languages. At the very least, this information should be made available in (i) the official language(s) of the host country (or in a language commonly used in the host country); and (ii) the language(s) of the Member State concerned. That information should be easily accessible on websites.

Member States cooperating with an external service provider should ensure that comprehensive and correct information is provided to applicants by the service provider. The Member State should provide all relevant information in sufficient detail and regularly monitor the service provider's practices in disseminating the information.

Recommended best practice in warning against the use of informal 'visa agents': Member States in local Schengen cooperation where informal 'visa agents' are active should agree on

a common warning about those agents. The warning should inform applicants: (i) that intermediaries are not necessary; (ii) that the use of intermediaries does not result in preferential treatment; (iii) that only Member States can take decisions on visa applications; and (iv) that the only fees to be paid are the service fee and the visa fee.

Member States allowing honorary consuls to collect visa applications should ensure that comprehensive and correct information is provided to applicants. The Member State should regularly monitor the honorary consuls' practices in disseminating the information

3.1. Other information to be provided to the public

Negative decisions on applications must be notified to the applicant, and such decisions must state the reasons on which they are based. Applicants whose application is refused have a right to appeal. The information must cover all stages of the procedure that may be followed in the event of an appeal, including the competent authority, as well as the time limit for lodging an appeal.

The mere possession of a visa does not confer an automatic right of entry. The holders of a visa are also asked to prove that they fulfil the entry conditions when they present themselves at the external border (see also the recommended best practice for informing visa holders when returning the travel document, *Visa Code Handbook for the processing of visa applications and the modification of issued visas, Part II, point 12*).

3.2. The application form

Legal basis: Visa Code, Article 11 (6)

The following information should be provided :

- that the application form is free of charge;
- where the application form can be obtained;
- the need for each individual applicant to fill in and submit an application form, even if several people are covered by the same travel document.

Member States should (where relevant, via the external service provider) provide all necessary explanations to support applicants in filling in the form correctly to avoid ambiguous or incorrect information being inserted.

The consulates must inform applicants of the language(s) that may be used when filling in the application form.

Recommended best practice for filling in the application form: When the application form is to be filled in electronically, the 'form' should include callouts containing additional explanations of each field.

If there is no electronic application form in place, the Member States and external service providers should consider providing on their websites a form-fillable PDF version of the application form, which can be filled in on-screen and used to easily generate the printed form. This would reduce the number of forms filled in in illegible handwriting.

PART II: LOCAL SCHENGEN COOPERATION

Legal basis: Visa Code, Article 22 (3), Article 24(2b), Article 25a(5) and (6), Article 31 (2) and Article 48

The Visa Code lays down the legal framework for the procedures for examining and taking decisions on visa applications. Member States' central authorities, consulates and local Schengen cooperation (under the guidance of the Union delegation) are responsible for the practical application of those legal provisions, taking local circumstances into account where relevant.

The objective of the cooperation among Member States' consulates (and of the exchange of information between them) is to benefit from other Member States' experiences or best practices (thanks to individual staff members' experience of differing appplication volumes and applicant profiles and particular expert knowledge). The aim is to harmonise practices for dealing with applications to prevent that diverging practices impact on application patterns.

1. Tasks to be carried out in local Schengen coooperation:

1.1. Member States and Union delegations must cooperate to:

- prepare a harmonised list of supporting documents to be submitted by applicants;
- assess the need for - and arrangements to implement - a local adaptation of the general rules for the issuing of multiple entry visas under Article 24(2) of the Visa Code (the 'cascade' rules);
- ensure a common translation of the application form into the language(s) of the host country, where relevant;
- draw up an exhaustive list of travel documents issued by the host country (including information on the security aspects of such travel documents) and update, it when relevant (a verification of the existing list should be carried out every two years);
- **draw up a common information sheet containing all relevant information to the public (Article 47(1) of the Visa Code), see Part I, section 3.**
- monitor, where relevant, the implementation of the temporary measures set out in Article 25a (5).

1.1.1 The role of the local Schengen cooperation

The local Schengen cooperation ('LSC') makes proposals for harmonised lists and local adaptations of the cascade rules by the majority of Member States' consulates in a given location. However, it does not have a formal role in the adoption of implementing decisions. Such implementing decisions are adopted by the Commission, with the assistance of the Visa Committee established by Article 52 of the Visa Code.

When a harmonised list of supporting documents has been drawn up at local level, or the need for a deviation from the standard rules for the issuing of multiple entry visas has been proposed at LSC level, the Union delegation will forward the contribution to the Visa Committee.

The Visa Committee will then examine the LSC's suggestion to consider it for the possible formal adoption by the Commission in an implementing decision (in accordance with the examination procedure as provided for by Article 52 of the Visa Code).

1.2. Member States' consulates must exchange information on the following:

a) The visa fee, if it is charged in a currency other than euro

***Recommended best practice on the review of the exchange rate**:* The frequency of review of the exchange rate used in the account section of the consulate, and any adjustment of the visa fee, depend on the stability of the exchange rate of the local currency in relation to the euro. The foreign-exchange rate for the euro should be verified at least once a month although shorter intervals may be justified. Member States should agree on a common procedure within LSC.

If 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 calculations in order to calculate the amount of the visa fee in local currency.

b) the introduction or withdrawal of requests for prior consultation for nationals of certain third countries or certain categories of such nationals;

c) the introduction or withdrawal of requests for ex-post information on visas issued to nationals of certain third countries or certain categories of such nationals;

d) cooperation with external service providers;

e) accreditation of commercial intermediaries and withdrawal of such accreditation;

f) cooperation with transport companies;

g) quarterly statistics on (i) uniform visas and airport transit visas applied for, issued, and refused; and (ii) visas with limited territorial validity that have been issued.

Recommended best practice on the quarterly exchange and compilation of statistics: To share the burden of compiling the data, it is recommended that the Member States present in a given location: (i) be in charge of the compilation for a given period (6 months or one year) using a common template; and (ii) present the quarterly compilation for the LSC to assess fluctuations and trends compared to the previous compilation**.**

h) information contributing to the assessment of migratory and/or security risks based on:

- the socioeconomic structure of the host country;
- local sources of information, including social security, health insurance and fiscal registers, and entry-exit registrations;
- the use of false, counterfeit or forged documents;
- irregular immigration routes;
- trends in fraudulent behaviour;

– trends in refusals grounds (linked to exchange of statistics).

The above exchanges should not lead to the establishment of arbitrary 'alert or warning' lists. Member States should instruct consulates that the creation of such lists must be in line with EU and national data protection requirements. If considering to establish such lists, Member States' consulates should consult the national data protection authority (DPA).

Likewise, Member States' consulates should also refrain from introducing 'local' visa bans. If a Member State wishes to prevent the issuing of a visa to a given third-country national, that should follow the relevant legal provisions for the entry of alerts in the Schengen Information System.

VIS Mail is to be used for any exchange on specific applicants or applications. Member States' central authorities should instruct consular staff to respond diligently to VIS Mail requests from other Member States to avoid obstruction and delays to the case-handling consulate's work (see the *Visa Code Handbook (I) for the processing of visa applications and the modification of issue visas,* Part II, section 6.8).

1.3. Exchange of information on insurance companies and assessment of travel medical insurance products on offer

Within local Schengen cooperation, information must be shared on insurance companies which offer adequate travel medical insurance, including verification of the type of cover and any excess amounts.

The verifications described in this section relate to travel medical insurance offered by insurance companies and not to each individual insurance policy submitted by applicants.

Checks should be carried out to establish whether (i) insurance companies offering travel medical insurance are effectively liable for claims for accidents that have taken place within the Member States; and (ii) the national legislation of the country where the insurance company is based allows for financial transfers to other countries. Mutual insurance agreements with companies based within the territory of the Member States are not necessarily the solution. In some third countries, national legislation forbids such mutual insurance. It is thus important to determine whether local insurance companies are effectively in a position to meet financial obligations in other countries, as this is essential for assisting a potential visa holder within the territory of the Member States. Particular care should be taken to verify whether a local correspondent is indicated in the policy.

It is important to verify the weighting of individual risks, because insurance companies frequently specify in the policy the exact amount covered for each risk. Even if the sum of the different risks amounts to 30 000 EUR the coverage could be misleading. The insurance company might artificially inflate coverage of less expensive risks (administrative expenses, for instance) and, on the contrary, allocate correspondingly smaller amounts to risks that are likely to be more expensive (hospital treatment and repatriation, for instance). Such policies must be considered as inadequate.

Consulates should be aware that insurance policies often contain references to significant exclusions or limitations for activities, medical conditions etc. that limit the coverage offered or exclude it entirely. If an insurance provides extremely low additional coverage limits for certain expenses (e.g. on dental treatment or repatriation of human remains), consulates should assess whether such additional limits effectively undermine the minimum coverage of 30 000 EUR.

Appropriate warnings should be published on the websites of consulates external service providers and honorary consuls, and at their premises, where relevant.

Travel medical insurance must cover any expenses that might arise in connection with repatriation for medical reasons, urgent medical attention and/or emergency hospital treatment or death. That insurance need only cover the duration of the applicant's stay(s) on the territory of the Member States and not cover the entire period of validity of the visa.

Example: A third-country national applies for a visa for the purpose of a single stay of 14 days, namely 14 May till 28 May . The insurance company should offer adequate travel medical insurance that is valid for 14 days within the period of validity of the visa.

It should be verified that the applicant's insurance actually covers on-the-spot assistance (medical expenses and repatriation, etc.), which should be distinguished from reimbursement of expenses made only when the applicant has returned. If the insurance only covers *a posteriori* reimbursement, this could call into question the objective of the requirement, which is to save Member States from having to use public funds to cover the expenses of medical treatment etc. for visa holders. In addition to exposing Member States to financial burden such products also give visa applicants a false impression of being adequately protected.

***Recommended best practice in assessing insurance policies offered*:** In some insurance policies the insured person must pay for a certain amount of any costs himself, i.e. an 'excess amount'. If this excess amount is very high, the true coverage provided by the insurance is called into question. Although it is not possible to prohibit such practices as part of the legislation on visas, any insurance companies that follow such practices should be denounced.

2. The structure and organisation of LSC

Legal basis, Visa Code, Article 38(3b) and Article 48(4), (5) and (6)

2.1. Meetings

LSC meetings must be organised regularly among Member States' representations and the Union delegation, and at a minimum of three times per year. The meetings must be convened and chaired within the jurisdiction by the Union delegation, unless otherwise agreed at the Union delegation's request.

All Member States that collect visa applications in the corresponding jurisdiction should attend those meetings. Member States with regionalised or centralised processing of visa

applications must ensure regular participation in the LSC in locations for which the regional hub or central office are responsible (without placing additional organisational burdens on the Member States' consulates and Union delegation present in the location concerned).

The purpose of the meetings is to deal with operational issues in the application of the common visa policy in general, and the Visa Code in particular. Single-topic meetings may be organised and sub-groups set up to study specific issues within LSC.

2.2. Participants

Participants in the meetings are (i) representatives of the Member States and of Schengen associated states applying the common visa policy, and (ii) representatives of the Member States that do not yet fully apply the common visa policy.

Only expatriate staff should participate in the meetings to ensure the confidentiality of exchanges. Expatriate staff should report to local staff on issues relevant for their tasks. Separate meetings for local staff may be organised, particularly for training purposes.

Representatives of Member States which do not apply the common visa policy and representatives of third countries (including the host country) may only be invited on an ad hoc basis due to their expertise or the information they possess on particular visa related topics that the LSC wishes to examine.

Honorary consuls entrusted with the collection of visa applications may not participate in LSC meetings.

2.3. Reports

Summary reports of LSC meetings must systematically be drawn up by the Union delegation (unless otherwise agreed at the Union delegation's request) and circulated to participants. Member States' representatives must forward the common report to their central authorities.

PART III: ORGANISATION OF THE COLLECTION OF VISA APPLICATIONS

Legal basis: Visa Code, Article 5(4), Article 8, Article 9(5) and Articles 40 to 44

1. Basic principles

Member States are responsible for organising the collection and processing of visa applications, bearing in mind that the processing procedures should not constitute an obstacle for visa applicants. Arrangements for receiving visa applicants by consulates or external service providers should be made with due respect for human dignity.

All Member States should be present, or represented, for visa purposes in all third countries whose nationals are subject to visa requirements. To this end, each Member State should either deploy the appropriate human and technical resources to collect visa applications in its consulates or seek to be represented by another Member State for examining visa applications. A Member State may also be represented by another Member State in a given location solely for the purpose of collecting visa applications and biometric data.

If their presence or representation is not possible, Member States must endeavour to cooperate with an external service provider to cover any 'blank spots' where they are neither present nor represented.

Whatever form of representation or cooperation is chosen, the 'one stop principle' should be complied with. This means that the lodging of an application must only require the applicant to visit one location, including in cases when biometrics are to be collected.

The fact that the applicant may be asked to submit additional supporting documents or called for interview during the examination of his application is not considered to be a breach of this principle.

2. Cooperation among Member States

Legal basis: Visa Code, Articles 8 and 41

A Member State may agree to represent another Member State for the purpose of:

- the collection of applications and biometric identifiers, examining and taking decisions on visa applications; or
- only collecting the visa applications and the biometric identifiers.

Such agreement must be subject to a bilateral arrangement between the two Member States concerned. Article 8 of the Visa Code lists the elements to be included in such arrangements.

The central authorities of a representing Member State must inform the represented Member State in advance when a decision has been taken to cooperate with an external service provider for the collection of visa applications.

3. Recourse to honorary consuls for the collection of visa applications

Legal basis: Visa Code, Article 42

If the honorary consul is a civil servant of a Member State, requirements are applied comparable to those that would apply if the tasks were performed by its consulate.

When the honorary consul is not a civil servant of a Member State all the requirements to be met are set out in Annex X to the Visa Code, except for the provisions of point E(c) of that Annex.

Under the Visa Code honorary consuls are not entitled to charge a service fee for collecting visa applications or returning travel documents.

4. Cooperation with external service providers

Legal basis: Visa Code, Article 8(9), Article 43 and Annex X

The various tasks that may be carried out by an external service provider are exhaustively listed in Article 43(6) of the Visa Code.

The external service provider is not entitled to: (i) participate in any way in the assessment of - or decision-making on - applications; (ii) become aware of the decisions on individual applications; or (iii) have access to the Visa Information System.

4.1. The contract between the Member State and the external service provider

Cooperation with an external service provider is based on a legal instrument that contains a set of minimum requirements. Those requirements are listed in Annex X to the Visa Code. Both the Member State and the external service provider must comply with those requirements.

The contract must, among other things:

- set out all tasks to be carried out by the external service provider (see Article 43(6) of the Visa Code);
- indicate the exact locations where visa application centres are (or will be) established in the global or regional framework contract or in the local contract or agreement and where the decision on the applications lodged there will be taken;
- set the service fee to be charged, and set out what services this fee covers either in the global or regional framework contract or in the local contract or agreement;
- oblige the service provider to provide complete and correct information to the general public;
- set the rules regarding data processing and transmission (external service providers must transmit the application files to the compentent consulate or authority as soon as possible, and always at least once a week (Annex X, point B(c));
- explicitly state that data on visa applicants (except the applicant's name, contact details and travel document number) are deleted at the latest 7 days after their transmission (the

remaining data must be deleted at the latest 5 days after the return of the travel document);

- oblige the service provider to provide proper training of staff, ensure proper vetting of staff (see Annex X, point C (d)) and the appropriate conduct of staff when performing their duties.

***Recommended best practices on key contractual clauses*:**

1. Information to the public

"The contractor shall provide the general public with appropriate information about the criteria, conditions and procedures for applying for a visa, as set out in points (a) to (c) of Article 47(1) of the Visa Code. That information must include (i) the criteria for the application to be considered admissible; and (ii) the required supporting documents to be submitted on the basis of a checklist.

The contractor shall obtain approval in written form by the contracting authority or its representative before such information is published in its websites or distributed to the public."

2. The service fee

"The contractor shall charge the applicant with a fee of […] EUR, in compliance with Article 17 of the Visa Code. That fee shall cover all the tasks entrusted to the contractor in line with Article 43(6) of the Visa Code".

2.1 Charging additional fees

"The contractor may provide optional services, other than those listed by Article 43(6) of the Visa Code and which are covered by this contract, against the payment of additional fees. Such optional services may include […]."

"The contractor shall inform the applicant of the optional character of these services in a plain, unambiguous manner. Such information shall be available at the contractor's premises or websites."

"The contractor shall obtain approval in written form by the contracting authorities or its representative before starting the provision of any additional, optional service."

3. Data transmission:

"The contractor shall at all times, including during transport to and from the *[competent decision-making authority]*, apply technical and organisational measures to prevent unauthorised access to application files ensuring that they cannot be read, copied, altered or removed without authorisation".

"The contractor shall send the data electronically, in encrypted form, or physically, in a secured way. The contractor shall send the data as soon as possible to the *[competent*

decision-making authority]. For physically transferred data, that must be at least once a week; for electronically transferred encrypted data, this must be at the latest at the end of the day of their collection."

4. Data deletion:

"The contractor shall delete the data at the latest 7 days after their transmission, and ensure that only the name and contact details of the applicant (for the purposes of the appointment arrangements), as well as the passport number, are kept until the return of the passport to the applicant and deleted 5 days thereafter. All data must be deleted permanently and irretrievably both from the contractors' local and central servers."

5.2 The service fee

Legal basis: Visa Code, Article 17

A service fee may be charged to applicants lodging the application with an external service provider. Member States are responsible for ensuring that the level of the service fee is proportionate to the costs incurred by the external service provider when the latter performs the tasks of collecting visa applications and returning travel documents. The proportionality of the fee must also be monitored, when derogations from the basic maximum level of the service fee (40 EUR) are applied.

In exceptional cases where the service fee charged would go beyond 80 EUR to cover a full service, the Member State concerned must notify this at the latest 3 months before the start of its implementation to the Commission. The notification must substantiate detailed costs to justify the increased service fee.

Applicants benefiting from a visa fee waiver[5], do not necessarily benefit from a service fee waiver when lodging the application with an external service provider, unless this is provided for in the contract with the external service provider.

Recommended best practice for assessing the levels of service fees charged by external service providers operating for different Member States in a given location: it is recommended that Member States in LSC regularly exchange information on the level of the service fee charged by their respective service providers and that the Member States assess whether that level has an effect on application patterns.

[5] Such as family members of EU/EEA and Swiss citizens or categories of persons benefitting from a reduced fee (e.g. children from the age of 6 years and under **18** years and persons exempted from the fee on the basis of a visa facilitation agreement).

5.3 Additional services and fees

The service fee should cover all services linked to the loding of the application and the return of the travel document to the visa application centre where the application was lodged.

Additional services may be offered by the external service provider in accordance with the legal instrument. Member States must instruct the service providers to clearly inform the public that other charges cover optional services and should regularly check that the service provider informs applicants that these additional services are optional. Example of such additional services include: SMS notifications, help filling in the application form, photocopying, 'premium' services, and the home delivery of passports.

5.4 Monitoring of the external service provider's activities and reporting to the Commission

Member States must regularly monitor the external service provider's activities to ensure it complies with all requirements and conditions set out in the contract. Spot checks on the premises of the external service provider should be carried out at least every 9 months.

Member States must ensure that the external service provider puts in place a set of measures necessary to allow the contracting authority to effectively monitor the external provider's compliance with the contract provisions and requirements. Such measures could include: the use of 'test applicants'; allowing remote access to webcams; regular performance and quality monitoring and reporting by the external service provider to the Member State; and allowing access to reporting and statistical tools from the external service provider's IT system.

Member States should foster cooperation in the regular monitoring of exernal service providers (e.g. burden sharing, exchange of best practices and including a common checklist on aspects to be verified).

By 1 February, each year, Member States must report to the Commission on their cooperation with and monitoring of external service providers worldwide.

6. Lodging the application at the competent Member State's consulate

Member States may decide to maintain the possibility for applicants to lodge their applications directly at the consulate instead of via an external service provider. The different options available for lodging a visa application should be presented plainly to the public at the external service provider's premises or on their websites.

However, particular attention should be given to ensure access for family members of Union citizens covered by Directive 2004/38/EC who must always be allowed to lodge their application directy at the consulate. That possibility must be genuine and effective.

7. Data protection and transmission

Legal basis: Visa Code, Article 44, and Regulation (EU) 2016/679[6]

Whatever the form of organisation chosen by a Member State for the collection of visa applications, Member States remain responsible for secure data processing in full compliance with data protection rules.

In the case of limited representation by another Member State, cooperation with an external service provider, or recourse to honorary consuls, the transmission of the data must be encrypted as prescribed in Article 44, irrespective of the transmission channel used.

No cross-border electronic transfer of data will be allowed in third countries where encrypted data transfer is prohibited. Nor will it be allowed in any third countries, where the cross-border transfer of encrypted data is subject to conditions that make it likely that the encryption is ineffective in protecting the security of applicants's personal data (such as the obligation to share encryption keys with the host country government).

In such cases, only physical transfer on an electronic storage medium may be authorised, provided the data are fully encrypted. The transfer must be carried out by a consular officer of a Member State.

Where such a transfer would require disproportionate or unreasonable measures, alternative solutions may be used in order to ensure safe and secure transmission of the data. For example, those solutions could include using private operators experienced in transporting sensitive documents and data in the third country concerned.

In assessing the disproportionate or unreasonable nature of the measures, the following elements should be taken into account: distance to be covered, transportation safety, number of applications concerned and availability of resources.

On adapting the security level to the sensitive nature of the data, any data containing the risk of identification of either the applicant or the host and/or revelation of their ethnic background and political or religious views must be considered to be sensitive."

[6] 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.