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acquis.

(Time of visit: June 2006)

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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THE EUROPEAN UNION

Brussels, 13 November 2006

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REPORT

from : Evaluation Committee

to: Schengen Evaluation Working Party

Subject : Draft report on the Evaluation Committee's mission to the **Embassy - Consular Section - of the Czech Republic in Kiev** in the context of the Czech Republic's preparation for the full implementation of the Schengen acquis.
(Time of visit: June 2006)

Delegations will find attached the draft report of the Schengen Evaluation mission to the Embassy - Consular Section - of the Czech Republic in Kiev, drafted by the Evaluation Committee (Annex III) (hereinafter *EvalCom*). It is presented to the Sch-Eval Working Party for discussion and adoption, allowing for its eventual submission to the Council.

Comments of the Czech authorities are set out in footnotes.

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Introduction: general context

Ukraine covers an area of 603 700 km². The country has 47 million inhabitants, 78 % of whom are Ukrainian and 17 % Russian, the remaining 5 % being mainly nationals of Belarus and Moldova. The capital, Kiev, has 2,6 million inhabitants. The official language is Ukrainian, but Russian is still widely spoken, especially in the east and south of the country.

Ukraine became independent on 24 August 1991. The 2004 presidential election triggered a strong popular movement (the "Orange Revolution") which brought the democratic opposition leader to power. The March 2006 general election gave the advantage to the supporters of the former Prime Minister but at the time of the evaluation mission a government had not yet been formed.

The country is 70th in the world ranking of developed countries (2004 UNDP Human Development Index). The per capita GDP is USD 970 (the average in the EU was USD 28 500 in 2005). The official rate of unemployment is 4 %, but according to the ILO it is nearer 11-12 %. Since 2000, the Ukrainian economy has registered a steady growth rate of 8 % per year on average.

The main problems facing the Schengen States'¹ visa services in Kiev are:

- managing migration risk and possible misuse of visas:

There is a substantial risk of illegal immigration to the European Union (cf. the monthly CIREFI reports), and the risks of visa misuse are real: given the differences in wage levels, a person can, in a month of illegally working in certain EU countries, earn as much as in a year in Ukraine. The risk is especially high in the case of workers on building sites and farms and in nursing. The real, concealed reason for travelling to Europe may also be to contract a marriage or obtain medical treatment.

- detecting document fraud:

Document fraud is widespread but seems to be confined to non-secure documents (employer's certificates, various invitations, etc.). Few falsified official documents (international or internal passports, deeds of ownership, etc.) have been detected, and the quality of the forgery of those that have been detected has been very high.

- the internal passport:

Many representations consider the Ukrainian internal passport as a key supporting document. This document is issued once in a lifetime (only the photo is regularly changed and the holders' address is constantly updated) and is rarely forged or issued out of convenience. This document is very useful as a supporting document because the international passports issued to the holder are listed in it and thus the frequency of the change of passports can be verified.

¹ In this context "Schengen States" refers to the States applying the Schengen acquis in full.

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– dealing with invitations of convenience:

False invitations are commonplace but often easy to detect owing to conspicuous errors (spelling errors, incorrect geographic locations, etc.).

However, it is hard for consular services to do anything about invitations of convenience that are formally authentic but conceal the real purpose of the applicant's stay. Additional documents often have to be requested to prove the purpose of the trip (for example, receipts and evidence of customs clearance for products previously purchased may be requested for business trips).

– managing tourist flows:

Most European consular representations have introduced a procedure for accrediting local travel agencies so that visa applicants wishing to visit an EU country as tourists are spared the need to appear in person. To guard against abuses, a system of accrediting the agencies' representatives (who are issued with badges including photos) has also been introduced in most cases. Agencies are penalised for any shortcomings in the handling of applications. Moreover, it does happen that travel agencies submit applications (for a fee) for the sole purpose of sparing the applicant the need to appear in person.

- security situation

Ensuring the security of the premises and of the staff: the risk of pressure on the staff of the visa sections is a matter of concern as it may lead to irregular issuance of visas. This risk is not only hypothetical in Kiev. The physical security of the staff and of the stickers must also be taken into account.

Conclusion

It appears that the processing of visa applications requires considerable vigilance in both the detection of false documents and the investigation of the applicants' real situation. Decision-making thus requires a systematic and thorough examination of a range of evidence proving the actual purpose of the planned stay. Individual in depth interviews are also necessary whenever there is doubt as to the applicants' intentions.

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Management summary

EvalCom considers that, on the basis of the checks carried out and the informations gathered, the Czech Republic, as far as its Embassy in Kiev is concerned, may be in position to implement the Schengen Acquis in full in due course.

Nevertheless, EvalCom wishes to comment on certain points which merit special attention or reviewing by the Czech authorities in order for the Czech Republic to achieve this goal :

- urgent reorganisation of the visa decision making process and awareness of issue of illegal immigration risk
- implementation of an appointment and a numbering system
- reinforcement of the security of the premises
- reorganisation of the filing
- denunciation in due time of the bilateral agreement with Ukraine on waivering of handling fees.

Furthermore, EvalCom draws the attention of the Czech Republic that any reference to Schengen at this stage should be immediately suppressed in the application form.

1. ACCESS TO THE CONSULATE

1.1 Location and opening hours

The consular section of the Czech Embassy in Kiev is located in one of the principal streets leading to Khreshchatyk, the city's main thoroughfare. The consular section is the sole occupant of the building.

The listed two-storey building is the property of the Ukrainian Diplomatic Service, leased to the Czech Republic in 2000.

Applications can be handed in from Monday to Friday from 9.00 to 12.30. Passports are returned from 14.00 to 16.30.

1.2 Information

Information for applicants is available on notice boards outside the building and in the waiting room and on the consular section's website (www.mzv.cz/kiev) in Ukrainian and Czech. Information can also be obtained from the receptionist on the spot or by telephone.

The notice boards and website contain information on the address and telephone numbers of the section, opening hours, requirements concerning each visa type, administrative fees, and an example of a correctly filled in application form, and a list of the insurance companies accredited to the consular section.

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1.3 Application forms

The application form is handed out by the police officer at the entrance. It is also available in the waiting room and on the website (in Czech, English, French, German, Russian and Spanish). The application form, printed in red, is designed to facilitate, if needed, the transmission of the data in compressed format. The content and boxes have been copied from the uniform format of the application form as set out in Annex 16 of the CCI. The title refers to Czech visas but in boxes 28, 34 and 44 the reference to Schengen is maintained giving the impression that the Czech Republic is already part of the Schengen. However, the asterisk concerning boxes 19-20-28-30 to 36 is missing (see below).

EvalCom comments and recommendations

Any reference to "Schengen" at this stage is inappropriate and can be misleading for the visa applicants. The Czech consulate should immediately start informing applicants that the visas issued only allow them to enter into the territory of the Czech Republic.²

It is recalled under current Community legislation (Directive 2004/38/EC³) Member States have to grant every facility in issuing visas to family members of EU citizens, which includes exempting them from filling in certain parts of the application form (boxes 19-20-28-30 to 36).⁴

1.4. Access management

The building has three entrances. The street entrance leading to an emergency staircase is kept locked and secured. One side entrance serves as a public entrance to the waiting room; the other side entrance is inside the security fence and serves as a staff entrance. The public entrance is unlocked during opening hours; the staff entrance is opened by a numerical code, which is changed regularly. Only the staff is authorized to open this door. Applicants are attended to on a first come - first served basis.

² Comment by the Czech Republic: As stated in the comments of the Czech Republic to the EvalCom report regarding our consulate in St. Petersburg, the Schengen harmonised visa application form was initially adopted in order to harmonize visa processing. The relevant articles (53, 54) of the Alien Act (Czech national law) have been amended in accordance with Decision No. 2002/354/EC. It has been understood that the text on the back of the Application form however may be misleading to applicants. References to Schengen rules and regulations will be replaced in the new, temporary version of the form by references to the relevant parts of the Act, until the date of full participation of the Czech Republic in the Schengen cooperation. All Czech consulates have been informed of this and instructed to immediately clarify to all applicants that only Czech national visas are issued.

³ Directive 2004/38/EC of the European Parliament and of the Council of 29.4.2004 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:

⁴ Comment by the Czech Republic: a separate sheet containing these references is available for the public in particular on the web-site.

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A waiting room on the ground floor has a maximum capacity of twenty persons but only 5 are allowed in at a time. There is a reception desk where the receptionist gives information to applicants on the spot and over the phone. Wall desks are at the disposal of applicants. A door leading to the other parts of the low security area is used by Czech nationals seeking consular assistance, or visitors coming to see the senior officials of the section, or for applicants who are invited for an interview. The door is locked, fitted with bars on the office's side, and can be opened only upon the instructions of the section's diplomatic staff.

Interviews with applicants are conducted in a sofa in an open space corridor in front of the deputy consul's office providing neither privacy for the applicant nor security for the consular staff.⁵

There are six counters providing ample room for the staff receiving applications. The counters are separated by partitions to ensure applicants' privacy. Each counter has only one function (short-stay visa applications, long-stay visa applications, applications from accredited travel agencies, document legalization, cash counter and a stand-by counter receiving visa applications at peak hours).

EvalCom comments and recommendations

No appointment system has been set up despite the size of the visa section, which issues 58.000 visas per year (i.e. an average of 230 per day). The embassy should consider implementing an appointment and a numbering system, at least during the peak season, to avoid any risk of long queues in front of the premises and to prevent the applicant from being in a position to choose the visa counter.⁶

Apart from the presence of a Ukrainian policeman inside the premises, privacy of applicants is well protected, except for the cases where an additional interview is carried out: the privacy of applicants should be provided for during interviews. EvalCom recommends that interviews are conducted in a separate and secured interview room.

⁵ Comment by the Czech Republic: The Czech Republic is aware of this but the layout of this building does not allow creating a new room for this purpose; in order to meet EvalCom's requirements regarding the facilities for conducting interviews it has been decided that a panic-button will be installed and that two officers will be present for safety reasons. (See also Annex II to this report).

⁶ Comment by the Czech Republic: The Embassy has considered the recommendation to use a numbering system and intends to implement this suggestion in future.

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2. SECURITY FEATURES OF THE BUILDING INCLUDING SECURITY CHECKS

2.1 Outside the building

The building is guarded around the clock by two local policemen from the unit in charge of the protection of diplomatic missions. One of them is posted inside the applicant's waiting room. EvalCom was informed that senior police officers check on the Ukrainian police officers at irregular intervals. The staff entrance and the door to the high security area have electronic locks with a four digit pin code system. There are no access cards. The alarm system, activated after working hours, include motion detectors in each room and contact sensors on windows and doors. If the alarm is activated the police officer calls a 24 hour emergency number of the consular officials on duty. There are also autonomous (i.e. not linked to the access control system) alarm push buttons behind the application-receiving counters and in the deputy consul's office. EvalCom was informed that in the case of an alarm, the guards immediately summon an emergency police assistance team. A camera monitors the area in front of the public entrance (pictures are not recorded), so that queuing applicants can be seen at any time on a monitor in the office of the deputy head of the consular section. The guards search every applicant with a hand held metal detector before he/she enters the building. Applicants are required to leave large bags outside the building under the supervision of the police officer. There is a "sluice" system to the waiting room. EvalCom was informed that both doors are normally open, meaning that the system does not serve its purpose.

EvalCom comments and recommendations

The presence of a Ukrainian police officer inside the waiting room is questionable in relation to the privacy and confidentiality of the applicants. ⁷

EvalCom recommends that the sluice system is used properly. ⁸

2.2 Inside the building

The building is divided into low and high security areas.

Low security areas include the cellar (with the section's archives and a room for local staff) and the ground floor (waiting room, six counters, reception desk, deputy consul's office, kitchenette, toilets and a corridor where visitors are received). The door to the back of the cash-counter is locked. The doors to the archives are ordinary wooden doors and the windows, although very small, are secured all windows in question are covered with flat wire.

⁷ Comment by the Czech Republic: With regard to the privacy of the applicants the guard is instructed to stay by the entrance, which is far enough from the counters to prevent the guard from overhearing any personal information.

⁸ Comment by the Czech Republic: The Embassy has been requested to use the sluice system properly.

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The high security area on the upper floor (space for the visa issuing staff, secretariat of the section, room for the visa issuing server, kitchenette, toilets and the office of the head of the consular section) holds visa issuing workstations, visa stickers and other registered material. The right of access is limited to staff members who are Czech nationals but local staff may be admitted under supervision (for training or translation tasks). Local staff does not have access to visa issuing workstations.

EvalCom comments and recommendation

- **The emergency exit of the room where stickers are printed must be secured.** ⁹
- **The wooden doors on the upper floor do not correspond to the concept of high security.** ¹⁰

3. SUBMISSION OF THE APPLICATION

EvalCom was informed that visa applications must be lodged personally by the applicant. Exemptions from this rule have been granted by the HoM to travel agencies submitting applications on behalf of travellers, holders of Ukrainian diplomatic and service passports, representatives of important cultural or sports organisations. On a case-by-case basis the HoM or his deputy may also decide to exempt individuals from applying in person or accept a visa application without the submission of some of the supporting documents that are normally mandatory. However, as a minimum a passport, the proof of travel medical insurance and the application form must always be submitted. In cases where exemptions have been granted, this is noted on the application form and the HoM signs the application form as well. Beneficiaries of this preferential treatment might be representatives of NGOs or members of the Ukrainian parliament.

The applications are pre-checked at the counter to ascertain the applicant's identity, the purpose of visit, accommodation arrangements and invitation. Passports and documents are checked using UV lamps, magnifying glass.

Upon reception the member of staff, enter the name and surname of the applicant into a register attributing running numbers. The same number is put on the application form, in order to be able to track which person received the application.

The "application" stamp is systematically put in the passport. However, it contains no code indicating the type of visa applied for.

⁹ Comment by the Czech Republic: IR sensors and locks from the inside properly secure the emergency exit. Any further increase of security measures (bars/ additional locks) would be in direct contradiction with safety and security regulations, as emergency exits may not be obstructed.

¹⁰ Comment by the Czech Republic: As the whole building is protected by IR motion sensors, window foils and bars, the installation of further security doors on the upper floor would be redundant (especially in a phase where the intention to leave the building altogether is prevalent).

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Applicants who have not filled in the application form correctly are asked to correct it. But if the applicant insists that the application be received as it stands, he/she is warned that the visa may be denied. The fact is noted in the appropriate section of the application form, to be taken into account in the decision-making process.

Every applicant is given a receipt containing his/her name and the date of lodging. Any person is in a position to collect the passports presenting this receipt.

EvalCom comments and recommendations

EvalCom recalls the importance of the basic rule of personal appearance (set out in the CCI, Part III, section 4 and Part V, 3rd paragraph) and recommends caution when exemptions from this rule are introduced.

If it is not the applicant who will collect the passport, the name of the person who will collect it on his/her behalf should be indicated on the receipt. ¹¹

According to Part VII, section 2, the code for the type of visa applied for should be added on the "application stamp".

EvalCom also noted that the internal Ukrainian passport, which is a very useful document to verify the situation of an applicant, is not required by the consulate. ¹²

3.1 Nationality of applicants

97% per cent of visa applicants are Ukrainian nationals. The remaining 3% are mainly nationals from Moldova and the Russian Federation.

3.2 Issuance of visas to applicants who are non-residents

Non-residing third country nationals (except for nationals from 22 third countries) are allowed to submit an application if they legally reside in Ukraine. For the other 22 nationalities, HoM may decide to accept their application on individual basis.

3.3. Issuance of visas to holders of travel documents not recognised

Visas are normally not issued to persons holding travel documents not recognised by the Czech Republic. But in certain cases (for reasons of national interest, humanitarian grounds, etc.) a visa is affixed to the uniform separate form for affixing a visa (Regulation 333/2002).

¹¹ Comment by the Czech Republic: The Embassy has been instructed to record the name of the person who collects a passport on behalf of an applicant on the receipt, further to note the ID-number of this person.

¹² Comment by the Czech Republic: The Embassy previously requested the internal Ukrainian passport only in the case of a request from the Alien Police Directorate. It has now been instructed to request it from every visa applicant.

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EvalCom comments and recommendations

When applying the Schengen acquis in full, the Czech Republic should be aware of the rules applying when other Member States do not recognise a given travel document (ie issuance of LTV visas).

3.4 Possibility of future representation under the provisions of CCI, Part II, section 1.2.

EvalCom was informed that Czech national legislation provides for the possibility of the Czech Republic to represent other Member States or to be represented by other Member States for the purpose of issuing short stay visas.

3.5. Administrative fees

Since 1 May 2005, all "B" and "C" type visas are issued to Ukrainian nationals free of charge. Visas are also issued free of charge to family members of EU citizens. For other nationalities various fees are applied depending on the nationality. Fees are charged in Euros and the applicant gets a receipt of payment containing the payer's name, reference number and type of the paid service, amount paid, date of payment, stamp and signature of the cashier.

EvalCom comments and recommendations

EvalCom recalls that bilateral agreements including waiver of the handling fee (not covered by EU agreements) must be denounced upon application of the Schengen acquis in full.

In relation to the collection of the administrative fee, the present organisation and work flow should be adapted in due time before the Czech Republic will apply the Schengen acquis in full, as larger numbers of applicants will have to pay the handling fee.

3.6. Cooperation with travel agencies

The consular section keeps records on each accredited agencies (valid licence from the Ukrainian Tourism Ministry, list of Czech partners, specimens of vouchers). Currently 66 travel agencies are accredited. If an agency violates the rules (i.e. fraudulent use of vouchers or other indications of "visa shopping"), the accreditation is immediately withdrawn. Such withdrawal has happened in 12 cases up to now.

Travel agencies submit in advance lists indicating the sizes of groups for which they wish to submit applications on a given date. The deputy consul is in charge of the planning of the reception of these applications. On the agreed date, the couriers of the travel agency bring the applications, presenting a copy of the original letter from the travel agency requiring the appointment. Couriers do not hold special badges. Evalcom was informed that random interviews of individual travellers are made. During its visit Evalcom was told that those interviews were conducted once a week (10 interviews per day according to the consul in its later written answer).

Separate statistics are compiled for the number of applications submitted by travel agencies, which varies between 48 and 68% of all applications in 2006.

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EvalCom comments and recommendations

The organisation of the cooperation with travel agencies seems satisfactory, except that EvalCom considers that the designation of couriers should be formalised by the issuance of a personalised badge with a photo, as the simple presentation of a letter by the courier is not sufficient to establish his/her identity. This would also enhance security in relation to the collection of passports (cf. point 3.).¹³

EvalCom recalls however that interviews are essential to the risk-analysis related to illegal immigration and other forms of misuse of visas.

4. PROCESSING OF THE APPLICATION

4.1 Examination of the application

The Czech staff (visa officers) register the files in the database on the day where the application has been received. The MRZ of the passport is scanned to transfer the information into the electronic file. The electronic file is completed with the necessary additional information and any relevant comments can be added electronically by the visas officers (including scan of documents). The photo of the applicant is scanned.

4.2 Consultation of central authorities

At this stage, an automatic check against the national "black" list (there is no local black list) is carried out. Irrespective of the result the file is systematically sent by the expatriate visa officers via MFA to the Alien and Border's police Department (MoI). The migratory and security risk are assessed. The following answers are possible:

- * "YES/NO"(with comments);
- * Additional information is requested (to be added or scanned into the electronic file by the visas officers);
- * "WAIT" (if central authorities need more time to make additional checks).

In all cases MFA acts only as a mailbox and a red light given by the Aliens' police cannot be overruled, except in the case of future accredited diplomats in Czech Republic who needs a clearance from both departments (MFA + MoI). In all such cases, MFA takes the final decision.

It should be noted that all Czech embassies have access through the MFA to previous applications submitted in any other Czech embassy around the world (information accessible: name of the person, date of visas issued/refused, name of the embassy/general consulate concerned, date of the decision).

¹³ Comment by the Czech Republic: The Embassy has been instructed to propose a formalisation of designation of couriers by issuing a harmonised personalised badge with a photo during the upcoming LCC meeting.

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In parallel, pending the outcome of the consultation, all files (hard copy) are brought to the Consul/Deputy consul for examination. Already at this stage a final negative decision may be anticipated by a sole "N" marked on the application form without any additional comment/justification. In all other cases, there are no indications in the file that an examination has been carried out. The hard copy files are then returned to the expatriate visa officers.

As a rule central authorities reply within 3 days. However, this period may be extended up to 30 days at the request of the central authority (see above). The average processing time is 5 days.

Possible replies from central authorities

- a) in the absence of a reply from central authorities within 5 working days, the consulate is authorised to take the final decision on its own.
- b) refusal from central authority means that the consulate must refuse the visa.
- c) approval from central authorities means that the consulate may decide whether or not to issue the visa.

In the later case the expatriate staff prints the sticker and affixes it to the passport without new consultation of consul or the deputy.

The passports are then submitted with the entire files the consul/deputy consul for final check and signature. If the consul or his deputy considers that the visa was wrongly issued, he cancels the sticker. EvalCom observed that a considerable number of stickers are cancelled at this stage.

If the issuance of the visa is confirmed, the visa sticker is stamped and signed by the consul or his deputy.

EvalCom comments and recommendations

- **The fact that there is no local black list prevents the Czech consular section from exploiting information provided by other Member States' representations locally and from the possibility to gather in an electronic data base information related to sensitive applicants not blacklisted at the national level.**¹⁴

- **The processing of applications is highly questionable for a number of reasons:**

- a) **the decision of the consul/deputy consul never appears clearly on the application form or in the electronic system before the issuance of the visa;**

¹⁴ Comment by the Czech Republic: The Czech Republic agrees that the non-existence of a local blacklist is unfortunate. Improvement of this situation could be reached by better local consular cooperation.

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b) it is unclear at what point in the decision making process, the final decision is taken:

- if the decision is taken at the moment the visa is printed, it means that it's not the consul or his deputy who takes the decision, but the member of the staff who decide to print the sticker;
- if the decision is taken by the consul or his deputy after the sticker is printed, the sticker will systematically have to be cancelled if the decision is negative.

The latter seems to be the case as a comparison of the number of stickers annulled from January to May 2006 (908) and the number of "visas not issued" (992) from the beginning of the year (see Statistics) suggests.

The cancellation of visa stickers should remain exceptional and only be related to cases of technical errors. Cancellation of visa stickers should not be part of the ordinary decision making process.¹⁵

5. SUPPORTING DOCUMENTS

5.1. Travel medical insurance (TMI)

As a general rule TMI is required. Exceptions are made for holders of diplomatic and service passports, and persons whose status imply that they are in possessions of sufficient coverage. Currently 41 insurance companies are accepted. For applicants travelling in a group, group insurance is accepted, provided that a list of the persons covered is submitted.

Nationals of third countries listed by national legislation are required to present on request of the Police a certificate of travel medical insurance, which shall cover the costs of treatment in connection with an injury or a sudden illness in the territory, including the costs associated with the transport of the ill person to the state of which travel document the ill person is in possession, eventually to other state where he/she has been granted residence permit. The travel medical insurance shall cover costs up to 30 000 EUR minimally for the duration of the stay in the territory.

EvalCom comments and recommendations

It is recalled that TMI was introduced as a requirement for visa applicants (Council Decision 2004/17/CE) and that in case of exemption the mention "insurance not required" has to be printed on the sticker.¹⁶

¹⁵ Comment by the Czech Republic: The Czech Republic will change its visa decision making process according to the recommendations of EvalCom.

¹⁶ Comment by the Czech Republic: Currently the code „P“ appears on the visa sticker if the applicant has presented his/her insurance, thus the absence of this letter is the equivalent of the required text. The Czech Republic will start to use the wording „insurance not required“ on the stickers as of the date of full participation of the Czech Republic in the Schengen cooperation at the latest.

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5.2. Proof of invitation, sponsorship and accommodation.

As Ukrainian citizens are not required to be in possession of such proof of invitation, the files examined by EvalCom did not contain such information.

Other nationals must present a proof of invitation by providing an official document based on the following principles.

National legislation sets out the rules for the data to be included in the form for proof of invitation and explicitly stipulates that the official form (drawn up by the Directorate of Border and Alien Police Service) must be used for this purpose. The authenticity of this form can be verified through the electronic visa issuing system and the form contains security features.

This form contains data of the inviting and the invited person and their legal obligations. One of these obligations is that the inviting person is obliged to cover costs relating to the alien's subsistence, accommodation and health care during the alien's stay in the territory until he/she leaves the territory.

An alien is required to provide supporting documents regarding funds to cover the stay in the territory when applying for a visa and present it at the request of border guards when entering the territory.

5.3. Proof of means of subsistence

Proof of means of subsistence shall be provided presenting financial means to an amount set out in the national legislation, or a document certifying pre-payment of the services associated with the stay or a document certifying that such services shall be provided free of charge. The following means can also be used to prove the means of subsistence: a bank statement certifying that the applicant has an account in that bank and indicating that the applicant is free to use it during his/her stay in the Czech Republic or a valid internationally recognised credit card.

EvalCom comments and recommendations

Although the Schengen acquis does not require applicants to present an officially certified invitation, the Czech Republic must be aware that when applying the Schengen acquis in full, applicants will have to provide proof of purpose of stay, means of subsistence and accommodation (CCI V 1.4).

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6. ISSUANCE OF VISAS

6.1 Types of visas issued

Type "A", "B" and "C" visas are issued. Less than 10% of all visas are multiple entry visas.

According to the section 26 "Act on Residence of Aliens in the Territory of the Czech Republic" and art 4 of "The visas issuance rules and procedures for consultation" double entry "C" visas cannot be issued.

EvalCom comments and recommendations

The national law should be amended in order to provide explicitly for the possibility of issuing double entry visas.

6.2 Residence permits

Diplomatic missions and consular posts of the Czech Republic are not empowered to issue residence permits. Residence permits are issued by police authorities.

7. REFUSALS

7.1 Motivation of refusals

Refusals are notified in writing and the legal grounds for refusal are given. This also applies to family members of EU citizens. On request by close relatives nationals of EU, the factual grounds for refusal may be given.

Refused applicants are not entitled to appeal the decision.

As a consequence of procedural safeguards enjoyed by family members of EU under Directive 2004/38/EC, refusals must be notified in written form, detailed motivation must be given and this category of persons also enjoys a right of appeal of such decisions. Czech legislation has to be adapted accordingly without delay as Directive 2004/38 applies from the Accession.¹⁷

7.2 Rejection rates

The average monthly rejection rate in 2005 was 5,26%. The lowest rejection rate was registered in December 2005 (1,70%), which was the month where the highest number of visas was issued. In the first five months of 2006 the rejection rate was 4,53%.

Nevertheless EvalCom was informed (2004 Status Report on Migration in the Czech Republic published by the Czech MOI) that Ukrainian citizen occupied the first place of illegally employed foreign workers in Czech Republic in 2002, 2003 and 2004 and of seekers of asylum in 2004. It is also the "traditionally the strongest group" of the category "illegal migration inland and violation of residence rules".

¹⁷ Comment by Czech Republic: Legislative amendment is in progress.

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EvalCom comments and recommendations

Compared to the average of all Schengen States, the refusal rate is low. Given the fact that the processing of visa applications seems to be of a rather formal nature (practically no supporting documents are required from the vast majority of applicants, i.e. Ukrainian citizens¹⁸), this situation is a matter of concern.

Awareness of the issue of illegal immigration risk and other forms of misuse of visas should be increased as this will become a key issue when the Czech Republic will start to issue Schengen visas.¹⁹

8. DESTRUCTION OF VISA STICKERS

Wrongly printed or otherwise defective stickers are collected by a diplomat who, at regular intervals (once a year) draws up a list of stickers awaiting destruction by shredding. The kinegram is not properly destroyed (it must be scratched). The stickers are destroyed in the presence of a Document Destruction Board and a record is made of the destruction.

EvalCom comments and recommendations

The kinegram, which is the more sensitive security feature of visa stickers, should be destroyed on cancelled stickers.

¹⁸ Comment by Czech Republic: All visa applicants must present required documentation. Only in the case that the applicant presents the official invitation confirmed by the Alien Police Directorate, which substitutes confirmation on accommodation, financial means of support and travel medical insurance, no further documentation is requested. All Czech embassies have been instructed that photocopies of all supporting documentation must be kept in the files.

¹⁹ Comment by Czech Republic: The Czech Republic is aware of this fact, for this reason Immigration Police Officers already work at the Embassy of the Czech Republic in Kiev and at the Consulate General of the Czech Republic in Lvov (this was a part of the presentation of the consulate).

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9. SECURITY

9.1 Staff

9.1.1 Division of tasks

The consular section has a staff of fourteen (two diplomats, nine members of the administrative and technical staff – all Czech nationals, and three locally hired staff who are Ukrainian nationals). All members of the visa-issuing staff are Czech nationals. The diplomats are the head and deputy head of the consular section; the administrative and technical staff includes a secretary and eight visa-issuing Czech officials. Locally hired staff includes a receptionist and two auxiliary consular employees who are dealing with visa application reception.

9.1.2 Training

EvalCom was informed that before being posted abroad, Czech staff members undergo a three month period of training at the Consular Department of the MFA. At the end of this period, the trainee is interviewed by the Consular Department's director.

After arrival in the post, the new staff member spends four weeks rotating through the consular section, carrying out various tasks related to visas, in order to get used to local conditions and learn how to deal with applicants. A record is made by the Consul/Deputy at the end of this period. Training on the detection of forged or falsified passports, documents and banknotes is also provided. During this period, handling of visa stickers and of money is always monitored by superiors.

EvalCom was informed that the entire staff is regularly instructed on personal data protection, security regulations and health and safety at work.

The consular staff rotates jobs every week at random. They are thus familiar with all jobs in the section.. This means that the visa section is able to respond to sudden increases of workload (e.g. increased number of applications, or absence of staff) without limiting the number of received applications. Locally hired staff who are Ukrainian nationals are not involved in the processing of visa applications and do not rotate. Local staff is trained on the spot.

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9.1.3 Checks upon recruitment and further evaluation

EvalCom was informed that all Czech staff members hold security clearances from the Czech National Security Authority, authorising access to information classified at least "Confidential". Local staff is recruited by recommendation only. Local staff's criminal record is not verified. The decisive criteria in the selection process are the consent of the Security Department of the MFA, previous employment record, letters of recommendation from previous employers and at least rudimentary knowledge of Czech.

9.1.4 (Potential for) misuse of professional position

EvalCom was informed that there was practically no risk for such misuse.

9.1.5 Protection of staff

EvalCom was informed that there is no special staff protection policy. Physical security measures are in place as described above. There are no security measures provided in interview situation.

EvalCom comments and recommendations

Management of staff seems satisfactory.

EvalCom notes nevertheless that the measures taken to protect staff from pressure are not sufficient in the interview room. It is recommended that due attention is given to a possible increase of the risk of pressure when the Czech Republic commences to issue Schengen visas.

9.2 Sensitive documents

Two or three times a year a supply of up to 30.000 blank visa stickers is sent to the Embassy by the MFA via diplomatic pouch. Receipt has to be confirmed, making reference to the respective numbers.

Visa stickers are kept in an outdated type²⁰ of safe in the office of the head of the consular section and subject to strict registration. Windows of this room are not barred. Each member of the visa issuing staff is allocated only the strictly necessary number of stickers (up to 100-300 stickers each). The staff member signs a receipt stating the serial numbers of allocated stickers; he/she then keeps the allocated stickers in a lockable box and is fully responsible for them. These boxes are kept in the above mentioned type of safe after hours. Only the consul and the deputy consul have access to the keys which are kept in a combination lock safe. Detailed register of sticker allocations, combined with the data in the electronic visa system, makes it possible to find out who and on what date printed out a particular visa sticker.

Sensitive documents are kept in the in the same place as the visa stickers. Stamps are kept after hours in a safe. Processed visa applications are kept in archives in the basement of the building.

²⁰ Comment by the Czech Republic: A new safe has been ordered for the CZ embassy in Kiev.

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Passports with printed stickers remain in the office of the cashier. Applicants hand in the receipt for the lodging of an application when collecting the passport. This receipt is kept in the file. Passports that have not been picked up 3 months after the issuance of the visa are returned the Ukrainian MFA accompanied by a verbal note. If the applicant comes back later to pick up the passport, he/she is given the number of the verbal note and directed towards the MFA. The window of this office is on the street and the bars in front of it are of a decorative nature.

EvalCom comments and recommendations

Taking into consideration the general level of security of the consular section of the Czech Embassy and of the safe in particular, it is problematic that such a large amount (30 000) of stickers are kept at the same time as approximately 58.000 visas are issued per year. ²¹

Also taking into consideration the low level of security of the office behind the counter where passports are handed out, it is problematic that passports with issued visas are not locked away and remain on the shelves for months. ²²

10. IT

10.1 Entry/access

The workstations, Lotus Notes network and the electronic visa system are protected by a double password system. Passwords are allocated to authorized staff by the MFA and expire every month. Data transfers use an ISDN connection; there are three backups (local server, server of the Czech Embassy in Moscow, main server at the MFA).

The screens are not blanked automatically. There are five levels of access to the system. Those levels can only be changed by central authorities.

The server room is only closed by a wooden door with an old fashioned combination lock.

10.2 Encryption

There are secure data links for data transfers between the consular section and the MFA.

10.3. Data protection

It is only possible to consult the national black list in relation to a submitted visa application and the list cannot be printed.

²¹ Comment by the Czech Republic: Based on the recommendations of the EvalCom, the MFA has instructed all consulates to keep only the necessary amount of visa stickers in the consular safe.

²² Comment by the Czech Republic: The Embassy has been instructed to place issued visas into steel lockable cabinets.

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EvalCom comments and recommendations

The level of protection of the computing system seems to be satisfactory except that the screens should be blanked automatically.²³

11. EQUIPMENT FOR DETECTING FALSE DOCUMENTS

At the counter there are magnifiers and UV lamps. During processing an Electronic Database of Documents (specimen of travel documents) may be consulted. These equipment are daily used.

EvalCom comments and recommendations

The consular section is properly equipped to detect false documents.

12. FILING

Applications forms are filed according the date of entry of applicant's data into the system. Application forms for refused and approved visas are not separated. All forms are kept for 5 years. When there is not more space in the archives of the consular section the oldest files are moved to the Consulate General in Lvov.

EvalCom comments and recommendations

The fact that the long term archiving takes place remotely makes it difficult to retrieve files and Evalcom recommends that the filing is reorganised in such a manner that the entire archive is at hand.²⁴

²³ Comment by the Czech Republic: As per the EvalCom recommendation to the Consulate General of the Czech Republic in St. Petersburg, all Czech consulates have already been asked to change their PC settings so that screens will be blanked after a preset delay and only unblanked after entering a password.

²⁴ Comment by the Czech Republic: The Czech Republic is aware of the fact that the current capacity of the storage rooms does not allow to keep the entire archive in one place. This situation will be changed once a new building for the Embassy is obtained. The Embassy's officials actively seek a new building.

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13. GENERAL CONCLUSION AND RECOMMENDATIONS.

EvalCom considers that, on the basis of the checks carried out and the informations gathered, the Czech Republic, as far as its Embassy in Kiev is concerned, may be in position to implement the Schengen Acquis in full in due course.

Nevertheless, EvalCom wishes to comment on certain points which merit special attention or reviewing by the Czech authorities in order for the Czech Republic to achieve this goal :

1. Organisational aspects ²⁵:

Any reference to "Schengen" in the application form at this stage is inappropriate and can be misleading for the visa applicants.

The embassy should consider implementing an appointment and a numbering system, at least during the peak season, to avoid any risk of long queues in front of the premises and to prevent the applicant from being in a position to choose the visa counter.

In relation to the collection of the administrative fee, the present organization and work flow should be adapted in due time before the Czech Republic will apply the Schengen acquis in full, as larger numbers of applicants will have to pay the handling fee.

The emergency exit of the room where stickers are printed must be secured.

It is recommended that due attention is given to a possible increase in the risk of pressure on staff when the Czech Republic commences to issue Schengen visas.

The fact that the long term archiving takes place remotely makes it difficult to retrieve files and EvalCom recommends that the archives are reorganised in such a manner that the entire archive is at hand.

2. Practice related to submitting and processing visa applications :

EvalCom recalls the importance of the basic rule of personal appearance (set out in the CCI, Part III, section 4 and Part V, 3rd paragraph) and recommends caution when exemptions from this rule are introduced.

Awareness of the issue of illegal immigration risk and other forms of misuse of visas should increase as this will become a key issue when the Czech Republic will start to issue Schengen visas.

²⁵ See Annex II: general comments.

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When applying the Schengen acquis in full, the Czech Republic should be aware of the rules applying when other Member States do not recognise a given travel document (i.e. issuance of LTV visas).

The decision making process should be fundamentally restructured.

3. Bilateral agreements :

EvalCom recalls that bilateral agreements including waiver of the handling fee (not covered by EU agreements) must be denounced in due time upon application of the Schengen acquis in full.

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EvalCom emphasizes that the above mentioned comments and recommendations under points 1 and 2, which are based on the situation as assessed in Kiev, can be relevant for other locations. The Czech Ministry of Foreign Affairs should ensure an appropriate follow up.²⁶

²⁶ Both EvalCom reports contain very useful recommendations, which have already been forwarded to all Czech missions abroad.

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ANNEX I

VISAS ISSUED BY THE CZECH REPUBLIC CONSULATE IN KIEV								
IN 2004								
	Visas A	Visas B	Visas C	Total Visas A+B+C	Visas D	Total Visas A+B+C+D	Visas Not Issued	Rejection Rate in %
May	0	92	3641	3733	186	3919	147	3,750957
June	0	17	4250	4267	209	4476	325	7,260947
July	0	26	3501	3527	209	3736	521	13,9454
August	0	37	3291	3328	176	3504	303	8,64726
September	0	35	2917	2952	205	3157	263	8,330694
October	0	43	3162	3205	152	3357	155	4,617218
November	0	25	2855	2880	149	3029	181	5,975569
December	0	38	3352	3390	122	3512	64	1,822323
Total	0	313	26969	27282	1408	28690	1959	6,793796

VISAS ISSUED BY THE CZECH REPUBLIC CONSULATE IN KIEV								
IN 2005								
	Visas A	Visas B	Visas C	Total Visas A+B+C	Visas D	Total Visas A+B+C+D	Visas Not Issued	Rejection Rate in %
January	0	8	2010	2018	164	2182	97	4,445463
February	0	18	2627	2645	150	2795	104	3,72093
March	0	16	3486	3502	170	3672	153	4,166667
April	0	39	4518	4557	182	4739	209	4,410213
May	0	52	4550	4602	183	4785	412	8,61024
June	0	44	4815	4859	171	5030	453	9,005964
July	0	224	5692	5916	266	6182	356	5,758654
August	0	72	5880	5952	322	6274	389	6,200191
September	0	90	4733	4823	277	5100	273	5,352941
October	0	51	5327	5378	270	5648	245	4,337819
November	0	37	4222	4259	267	4526	246	5,435263
December	0	58	7022	7080	311	7391	126	1,704776
Total	0	709	54882	55591	2733	58324	3063	5,262427

VISAS ISSUED BY THE CZECH REPUBLIC CONSULATE IN KIEV								
IN 2006								
	Visas A	Visas B	Visas C	Total Visas A+B+C	Visas D	Total Visas A+B+C+D	Visas Not Issued	Rejection Rate in %
January	0	16	2670	2686	269	2955	146	4,940778
February	0	35	2882	2917	365	3282	239	7,282145
March	0	72	5256	5328	425	5753	274	4,762732
April	0	55	7074	7129	361	7490	243	3,244326
May	0	73	5111	5184	322	5506	210	3,814021
June	0	56	6064	6120	303	6423	241	3,752141
July	0	91	6653	6744	138	6882	221	3,211276
August	0	34	6580	6614	56	6670	466	6,986507
Total	0	432	42290	42722	2239	44961	2040	4,749241

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ANNEX II

The Ministry of Foreign Affairs of the Czech Republic is well aware of some of the shortcomings of the current consulate in Kiev, the difficulties are not only of spatial character, but may also regard some security issues. The correction is made difficult and only partially feasible due to the fact that the building is not the property of the Czech Republic. The owner is unwilling to pay even parts of all needed constructional adjustments and the Ministry logically refuses to invest too much into foreign property.

For the above-mentioned reasons the Ministry of Foreign Affairs is actively seeking an appropriate building to house both the Embassy and the Consulate. The sought object should comply with the Schengen catalogue and will be bought into the ownership of the Czech state, thus making it easier to make any necessary changes. The project forms a part of the priorities on the main investment catalogue of the Ministry for the years 2006-2007. The departments dealing with investments and acquisitions and the Security department have been informed of the Schengen requirements and informed that all consulates must comply with these.

The plan to house both the Embassy and the Consulate in one building will facilitate the organization of an appropriate coverage by the security service as well as the correct safekeeping of visa stickers, passports and archiving of applications.

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List of experts

(FI)	Timo TÄYRYNEN
(SI)	Ms Natasa BERGELJ
(BE)	Philippe LEFEBVRE
(NO)	Kristin HEFRE
(DE)	Wolfgang HAMMER
(ES)	Álvaro KIRKPATRICK DE LA VEGA
(FR)	Patrick POINSOT
(Cion)	Gérard BEAUDU
(GSC)	Anne-Marie SØRENSEN

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