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VISA 261  
COMIX 845

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

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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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# RESTREINT UE



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THE EUROPEAN UNION

Brussels, 23 October 2006

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SCH-EVAL 143  
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## REPORT

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from : Evaluation Committee  
to: Schengen Evaluation Working Party

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Subject : Draft report on the Evaluation Committee's mission to the **Embassy - Consular Section of Hungary in Kiev** in the context of Hungary's preparations for the full implementation of the Schengen acquis <sup>1</sup> (Time of visit: June 2006)

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Delegations will find attached the draft report of the Schengen Evaluation mission to the Embassy - Consulate Section - of Hungary 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 Hungarian authorities are set out in footnotes.

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<sup>1</sup> See also overall comments to the evaluation report made by the Hungarian authorities, Annex II to this report

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## **Introduction: General context:**

Ukraine covers an area of 603 700 km<sup>2</sup>. 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'<sup>2</sup> visa services in Kiev are:**

– managing migration risk and possible misuse of visas:

There is a substantial risk of illegal immigration to the Schengen States (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 Schengen States, 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 "Schengen 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.

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<sup>2</sup> 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 "Schengen consular representations" have introduced a procedure for accrediting local travel agencies so that visa applicants wishing to visit a Schengen State 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 information gathered, Hungary, as far as its Embassy in Kiev is concerned, may be in a 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 Hungary in order for being in a position to achieve this goal:**

- abolition of the current practice with regard to applications received by the Hungarian honorary consul in Tbilisi
- increased caution with regard to exemptions from the basic rule of personal appearance
- adaptation of the present organisation and work flow with regard to the collection of the handling fee
- increased awareness of the issue of illegal immigration risk
- making sure that the duration of the consultation procedure with regard to the full application of the Schengen Acquis is reduced, both concerning Annex 5B consultations and, in order to prevent visa shopping, concerning 5A consultations
- awareness of the rules applying when other Member States do not recognize a given travel document (i.e. issuance of LTV visas)
- denunciation in due time of the bilateral agreements on waiver of the handling fee and on the exemption from presenting an invitation

## **1. ACCESS TO THE CONSULAR SECTION**

### **1.1 Location and opening hours**

The Hungarian embassy is situated in the so-called “diplomatic district” of Kiev. The consular section was built in autumn 2003, when the whole building was renovated. The embassy occupies the entire building and is located on three floors. The consular section is situated partially on the ground floor (reception area, interview room, an office for two consuls) and partially on the second floor (head of consular section, an office for two more consuls and a room for printing visa stickers). The archives are situated in the basement in a room used exclusively for this purpose.

### **1.2 Information**

Information for visa applicants is available in Ukrainian, English, Hungarian and Russian on the embassy's web-site ([www.mfa.gov.hu/emb/kiev](http://www.mfa.gov.hu/emb/kiev)) and on an information board in front of the embassy. Applicants are warned about the possibility of persons in front of the embassy and nearby, offering their services in filling in application forms. It is indicated these persons have no connection to the consulate whatsoever and information for the clients is free of charge and the consulate can help to fill in the application forms.

Applicants can receive information by telephone during the first four working hours. Otherwise an answering machine provides information (opening hours, processing time, the address of the consular section, the web-site and supporting documents for each type of visa). The text runs in Ukrainian, Russian and Hungarian according to the choice of the caller.

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## 1.3 Application forms

Application forms are available in Ukrainian, English, Russian and Hungarian on the Embassy's web-site. In the waiting room application forms are available in Ukrainian and Hungarian with a possibility to have other languages on request at the counter. Filled in samples are available inside and outside. In the waiting room there are posters with the Latin transliteration of Cyrillic letters. Other language versions of the application form can either be downloaded from the web-site or are available upon request (Hungarian, German, French, Spanish, Greek and Russian).

The layout and content of the application form correspond in general to the uniform application form set out in Annex 16 to the CCI, and the reference to "Schengen" in box 44 has been replaced by "Hungary".

## 1.4 Access management

The building has three entrances from the street: one for the visa applicants, one for the personnel and one for embassy cars. There is also an entrance into the building from the courtyard. A Ukrainian police officer controls the queue on the pavement outside the building (from 9 - 17.00). This guard is in phone contact with the guards inside the building. Particular access facilities are at the disposal of persons in wheel chairs.

One can enter the consular section through a gate and a door, which together compose a sluice system, and a security control. The Hungarian security guard posted inside controls applicants with a hand held metal detector and there is also a metal detector gate. At the entrance 12 lockers are at the disposal of applicants to prevent them from carrying luggage into the waiting room.

Applicants can enter and leave the consular section through one door only (with the exception of disabled). Normally no more than 12 persons are admitted in the waiting room at the same time, corresponding to the number of lockers.

The Ukrainian authorities have prohibited the building of a roof to shelter waiting applicants in case of bad weather conditions. Therefore umbrellas are lent to applicants under such circumstances. When many persons wait outside the consular section, elderly people, people with children and representatives of accredited travel agencies are given priority. Having passed the security checks, the applicant is directed to a counter according to a numbering system.

Embassy staff enters through the main entrance. They do not have keys and the security guard opens both the door and the gate for car traffic. The movement of staff inside the building is regulated by a key card: everybody has access only to those premises where he works and the common premises. The magnetic cards are registered on the central server by the name of the user.

Opening hours of the consular section: Monday – Thursday: 9.00-12.00 and 14.00 - 16.00, Friday: 9.00 -12.00 and 13.30-14.00. Passports are returned 15.30 -16.00, on Friday 13.30 -14.00.

## EvalCom comments and recommendations

**The access management meets Schengen standards and requirements, also in terms of user friendliness. In particular, the information given to applicants that private consultants offering their services have no connection to the consulate whatsoever deserves a positive comment.**

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## 2. SECURITY FEATURES OF THE BUILDING INCLUDING SECURITY CHECKS

The embassy is guarded by a Ukrainian police officer posted outside from 9.00-17.00 on week-days. In case of an emergency, additional officers can be sent from the nearby police station in 4-5 minutes. The officer's tasks include maintaining order among waiting applicants. The Ukrainian police officer closely cooperates with the Hungarian security guard of the consular section.

The embassy employs four Hungarian security guards on a contract basis for a half year period each time. They work in shifts: one is on duty round the clock at the main entrance, another one works as security guard at the consular section, the third one is on stand-by and the fourth is off duty. The movement of people waiting in the street is monitored by a video camera system. The security guard of the consular section, the security guard of the embassy, and the consul in charge have individual screens.

There are 10 surveillance cameras and the taped images are stored for 30 days. An alarm system is connected to the Ukrainian police and the embassy's own security staff on a 24 hours basis. There are also movement detectors.

The consular staff works behind bullet-resistant windows and they communicate with applicants through an intercom system. Under the glass panels there are lockable drawers to hand in documents. The interview room is also equipped with a bullet-resistant window, a lockable drawer, and a security camera. The applicant enters into the interview room through a door which is opened electronically. There are "panic buttons" at all the counters and the alarm signal goes to the security guard. The counters are supervised by security cameras both from inside and from the waiting room.

## 3. SUBMISSION OF APPLICATIONS

### 3.1 Description of the procedure

EvalCom was informed that as a rule applicants must appear in person. However, there is an extensive list of exceptions, including inter alia accredited travel agencies, close relatives travelling together, those who have a power of attorney, those who travel in groups to sport, cultural and religious programs, those who live far away from the visa issuing post and, generally, those who can prove a justified reason for not coming in person (e.g. illness).

Currently the honorary consul of Hungary in Tbilisi receives applications which are submitted via the Georgian MFA in a non sealed envelope to the Georgian embassy in Kiev, which eventually forwards it to the Hungarian embassy. Such applications are accompanied by a letter of recommendation from the honorary consul based on an interview with the applicant. EvalCom was informed that out of approx 100 applications from Georgian nationals, 4 had been submitted via this channel in 2006.

### EvalCom comments a 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.**

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With regard to applications received by the honorary consul of Hungary in Tbilisi, EvalCom considers it unacceptable that Georgian authorities are in practice able to screen an application; therefore this channel of transmission should be abolished<sup>3</sup>.

Attention is drawn to the fact that a recommendation letter from an honorary consul can under no circumstances substitute an in depth examination of the application and the interview should be carried out by duly authorised consular staff and cannot be delegated to an honorary consul.<sup>4</sup>

## 3.2 Nationality of applicants

Generally, Ukrainian citizens and third country nationals with a residence permit in Ukraine may apply for a visa in Kiev. 95 % of the applicants are Ukrainians. However, applications are also accepted from persons residing in a third country where there is no Hungarian representation at all or under special circumstances (see 3.3, below).

## 3.3 Applications from non-residents

The general rule is that the visa application should be lodged at the Hungarian foreign representation of the state where the applicant's habitual residence is located, or in the state of the applicant's nationality. However, the foreign representation can depart from the general rule under special circumstances which must be justified by the applicant.

EvalCom was informed that, if the application is lodged at a Hungarian consular representation operating in a state other than that of the applicant's habitual residence, the representation shall immediately contact the competent Hungarian consular representation to request information about the applicant and process the application with special caution.

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

EvalCom was informed that currently Hungarian national law does not allow Hungary to be represented by other States for issuing visa and Hungary can not represent any other State for the purpose of issuing visa. However, legislation is under way providing a legal basis for such cooperation once Hungary will apply the Schengen acquis in full (the adoption of the amended legislation is expected in autumn 2006). EvalCom was further informed that Hungarian authorities have started negotiations on representation with two Member States already applying the Schengen acquis in full.

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<sup>3</sup> Comment by Hungary: The Embassy in Kiev was already instructed to look for an interim alternative solution. As an ultimate solution representation by a Schengen Member State is envisaged.

<sup>4</sup> Comment by Hungary: The recommendation letter does not substitute the in depth examination of the application conducted by the embassy personnel. The letter is only one of the supporting documents of the application. HU also notes that the honorary consul deals with a selected clientele, with *bona fide* applicants and not tourists or visitors. He has helped for years the Hungarian Embassy in Moscow, later that in Kiev in visa matters. With none of the applicants that got a visa with the recommendation of the honorary consul the Hungarian authorities ever had any problems. His pre-check and recommendation have proved to be quite an effective tool.

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## EvalCom comments and recommendations

EvalCom recalls the importance of measures to be taken to permit Hungary to represent other Member States and be represented by other Member States once Hungary will apply the Schengen acquis in full, and acknowledges that steps have been taken to that end.

### **3.5 Processing of applications from 3rd country nationals holding a non-recognized travel document**

The Hungarian Visa Manual contains a list of documents not recognised by Hungary as valid travel documents presented most frequently. Since entry is not possible with these “bogus documents”, visas cannot be affixed to them.

Since 1.5.2004, the uniform separate sheet as provided for by Council Regulation (EC) 333/2002 is used for affixing the visa sticker in the following cases:

- when the applicant is the national of or his/her travel document is issued by a country not recognised by the Republic of Hungary;
- if the territorial validity of the travel document does not cover the Republic of Hungary;
- if the circumstances justify the purpose of stay, but the applicant's passport does not have free space for affixing the sticker.

## EvalCom comments and recommendations

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

### **3.6 Administrative fee**

"A", "B", and "C" type of visas are issued free of charge to Ukrainian and Serbian citizens. Other applicants have to pay 35 EUR for these types of visas. An additional "express" fee of 10 EUR may be charged (for applications processed in one day). Visas are issued free of charge to accredited diplomats and holders of service passports, for family members of an EEA national and in specific individual cases on a written and substantiated request of the applicant. Furthermore there are exemptions granted for applicants of specific nationalities. Applicants pay in cash and if requested get a receipt.

## EvalCom comments and recommendations

**EvalCom recalls that bilateral agreements on waivering of the handling fee (not covered by EU agreements) must be denounced in due time before application of the Schengen acquis in full.<sup>5</sup>**

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<sup>5</sup> Comment by Hungary: HU was aware already at the time of conclusion of the bilateral agreement of the necessity to harmonize the visa fees and other provisions of visa issuance with those applied by Schengen MSs. Therefore the bilateral agreement stipulates that „Before the accession of the Republic of Hungary to the Schengen Agreement the Contracting Parties shall mutually examine the need of revision of this Agreement and agree on the necessary modifications.“

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

**It is recalled that the CCI does not contain any provisions on "fast track" processing of visa applications.<sup>6</sup>**

### **3.7 Cooperation with travel agencies**

Currently the Hungarian embassy cooperates with 89 accredited travel agencies. One of the consuls is responsible for accreditation and contacts with travel agencies.

One basic requirement is that the agency must handle at least 100 applications per year. The agencies must present their notarized official licence, a contract with a Hungarian partner (not needed in case of transit tourism), a letter of recommendation from their Hungarian partner, abstracts of their bank accounts, a letter of commitment and present a proof of guarantee as required by Ukrainian legislation (20.000 € in the case of a tour operator and 5.000 € in the case of a tour agent). Accreditation at other embassies or consulates is also taken into account.

Each accredited travel agency can designate two or three couriers, whom the embassy provides with accreditation cards with scanned photo. The card is valid from 6 months to one year (depending on the significance of the agency). EvalCom noted that some couriers still operated with old type cards with a glued on photo but was informed that since the end of 2005, all accreditation cards are equipped with scanned photos. The list of accredited agencies can be found at all the counters. Furthermore, the photos of all accredited couriers are available in the computer system.

In case of any illegal or suspicious act performed by the agency, the accreditation, depending on the seriousness of the act, is suspended or withdrawn. Warnings are given before withdrawal.

Random checks are made of applicants having submitted applications via an agency (by a telephone or a personal interview). EvalCom was informed that 1-2 such checks are made per day<sup>7</sup>. Indication that such a check has been carried out is made on the application form.

Individual tourists must submit their applications in person.

### **EvalCom comments and recommendations**

**The organisation of the cooperation with travel agencies seems satisfactory.**

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<sup>6</sup> Comment by Hungary: The MFA of Hungary has proposed to the Ministry of Justice and Law Enforcement that prepares the new Alien's Act, expected to be enacted by the end of 2006 to abolish the extra fee for fast track visas.

<sup>7</sup> Comment by Hungary: 1-2 checks are made per each group per day.

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## 4. EXAMINATION OF APPLICATION

### 4.1. Reception and registration of the application

The following routine checks are carried out at the counter by local staff: validity of the travel document, purpose of trip - duration of trip, pre-check of supporting documents. The consul is constantly at the disposal of staff at the counter to clarify questions of doubt. At this point the "application" stamp is affixed to the passport.

The application is rejected at the counter if

- the consular section is not responsible for processing the application (see point 3.3. above);
- the applicant did not appear in person and his/her power of attorney is not accurate or his/her family status – in case of family members travelling together - cannot be verified;
- the application form is not properly filled in or is not signed by the applicant and after the call from the administrator/consul the applicant fails to make the necessary corrections;
- the passport is not valid or does not have space for the sticker or is damaged.

The local staff member receiving applications at the counter marks the application form with an exclamation mark if any of the information provided by the applicant seems suspicious. In those cases, the consul discusses the case with the colleague who marked the form before the decision is taken.

After the application has been taken in, the data from the applicant's travel document are scanned and the data from the MRZ are automatically transferred into the Consular Information System (hereinafter: "CIS"), creating instantly a new application file. The photo from the passport is scanned as well, unless the passport is more than six months old. In such cases the photograph provided by the applicant is used. The following data are added manually: issuing date of the travel document, place of birth, details of family members, details concerning the visa applied for (category, requested dates of entry/exit, requested number of entries ), data on the inviting persons/sponsors, and in case of transit visa: details of visa for the final destination. During this process, the authenticity of the travel document is checked by the employee by three different illuminations (normal, infra and UV). At this stage, the (local) employee also has to comment on the suggested further processing, i.e. refer to MFA or to MoI, refuse or approve, pass on to consul. EvalCom was informed that in practically all cases the option "pass on to consul" was used.

In depth interviews are made with applicants to whom the administrators call the attention of the consuls or whose documents necessitate further explanation. The interview can be carried out right away or at a later date. EvalCom was informed that in approx. 5-7% of the cases such in depth interviews take place.

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## EvalCom comments and recommendations

Taking into account that data are entered into the CIS by local staff, it seems at least questionable to provide the employee with the possibility to suggest approval of the application (even though, as EvalCom was informed, this option is practically never exercised).<sup>8</sup>

A random check of some applications recently received showed that in one case the applicant's signature was missing and in some other cases the signature was identical (as EvalCom was informed, those applications referred to members of a travel group). EvalCom therefore strongly recommends that sufficient attention is paid to the signature on the application form.

### 4.2 Examination of the application

After registration, the application form together with the supporting documents are submitted to the consuls for decision. On opening the file, checks of the "black list" and the list of lost and stolen documents are carried out automatically by the system, using the applicant's name as search criteria. However, it is also possible to check the "black list" without link to an application form and on the basis of date of birth, too. Technically a visa can be issued even if the applicant has been signalled in either of these lists.

EvalCom was informed that in the decision-making process the consul regularly checks connected files (previous visa applications of the same person at the Kiev embassy) which are automatically retrieved by the CIS. Furthermore, also other files with the same inviting person can be checked in the CIS.

#### 4.2.1 Consultation of central authorities

In general, there are three types of mandatory consultation of central authorities:

- applications for D-visa;
- for applicants of 49 nationalities the Ministry of the Interior is consulted - a negative decision is binding, (refusal letter, if requested, is issued by the consulate);
- for persons invited by Ukrainian and Georgian diplomats accredited in Hungary (Ministry of Foreign Affairs) - a negative decision is binding.

Otherwise, the consul may decide to consult central authorities on a case-by-case basis, i.e. doubtful cases.

Usually replies are transmitted via the system within four days. However, EvalCom was informed that in many cases the consultation procedure takes up to 30 days<sup>9</sup>.

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<sup>8</sup> Comment by Hungary: It is in fact a formality that the administrator can suggest a case for approval, refusal or sending to the central authorities. At the same time giving supplementary information by the administrative staff to the decision making consuls is a good practice: calling the attention of the consul to certain details in the application, or remarks can prove especially useful if the administrator is the same who met the applicant in person. The MFA is considering to limit this function to provision of information without making any suggestions.

<sup>9</sup> Comment by Hungary: According to Hungarian legislation the consultation procedure may take up to 30 days, but in practice this applies only in exceptional cases.

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## EvalCom comments and recommendations:

It merits a positive comment that the CIS also offers information on other files where the inviting person is the same.

Measures should be taken to reduce the duration of the consultation procedure with regard to the full application of the Schengen Acquis, both concerning Annex 5B consultations and, in order to prevent visa shopping, concerning 5A consultations.

### 4.3 Supporting documents

According to Hungarian national provisions, the following supporting documents are required:

- a travel medical insurance
- proof of legal stay, if the applicant is not a citizen of Ukraine and there is a visa issuing Hungarian consulate in his/her country of residence
- proof of the purpose of the visit
- the availability of sufficient financial means.

## EvalCom comments and recommendations

EvalCom 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.

### 4.3.1 Proof of financial means can primarily be one or more of the following documents:

- an original income certificate of the employer
- a bank account statement on the account turnover during the last three months
- a pension slip
- a certificate of registration in the case of an individual entrepreneur or one-man firm
- a valid ticket, a certificate of a reserved and prepaid journey, accommodation
- a letter of invitation issued and endorsed by the Office of Immigration and Nationality (OIN). If the latter is available, no additional proof of financial means will be requested. Such a letter of invitation is not required from Ukrainian citizens. The OIN checks the hosting person (legal or natural) in the criminal records and the population register.

### 4.3.2 Proof of purpose of visit

- **transit visa:**
  - a valid ticket; or a certification of a transport vehicle to be used with appropriate insurance,
  - a visa to the target country, if necessary
- **short stay:**
  - Tourist visit: a tourist voucher; or in case of an individual visit: the prepaid reservation of accommodation.
  - Study tour or a visit with a scientific or training purpose: the certificate of the receiving institution.
  - Visit (friends): an official letter of invitation issued and endorsed by the OIN (also covering sponsorship, see above) or a letter of invitation in the form of a notary public document (not necessarily covering sponsorship) and a photocopy of the personal identification document/passport of the inviting party in Hungary.

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- Visit (relatives): the same as for visiting friends; or a statement given by the applicant on the existence of family relations, indicating the degree of it, giving the name, address and phone number of the family member to be visited and documentary proof of the stated relation.
- Business trip: in case there is a business partner in Hungary: a letter of invitation from the business partner and proof of existing commercial-business relations; or a certificate of the local chamber of commerce on the registration of the company whom the applicant represents.

The letter of invitation has a prescribed uniform form and is issued to a sponsor (natural or legal person) pursuant to being scrutinized by the competent Immigration Office in the country. Even though, according to the national legislation, the invitation letter is one of the supporting documents which can be requested from the applicant, the nationals of Ukraine are exempted from this requirement on the basis of the bilateral agreement.<sup>10</sup>

## EvalCom comments and recommendations

**With a view to the application of the Schengen acquis in full, EvalCom recalls that bilateral agreements on the exemption from presenting an invitation must be denounced in due time before application of the Schengen acquis in full.<sup>11</sup>**

### 4.3.3 Travel Medical Insurance

The bilateral social security agreement between the Soviet Union and Hungary is still in force with regard to Ukraine and thus citizens of Ukraine are entitled to urgent medical treatment by simply showing their passport. Due to this fact a separate medical insurance is not required, although it is recommended, because a travel medical insurance policy covers more than just urgent medical treatment.

For third country nationals not covered by the Soviet-Hungarian or other social security agreements, a travel medical insurance is obligatory. The proof of being in possession of TMI must be presented when submitting the application. In case a multiple visa is issued, the TMI has to be valid for the first trip and the applicant is asked to sign a statement declaring that he is aware of the rules concerning TMI and at every further entry he has to have a valid TMI.

## EvalCom comments and recommendations

**It is recalled that the proof of being in possession of TMI will have to be verified by the consulate during the processing of the visa application once Hungary will apply the Schengen acquis in full. The TMI will have to be in conformity with the CCI requirements.**

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<sup>10</sup> Comment by Hungary: The invitation, within the meaning of the bilateral agreement, only refers to an officially certified invitation and does not prevent the consulate from requesting an informal invitation.

<sup>11</sup> Comment by Hungary: An officially certified letter of invitation is neither an inevitable supporting document for a uniform Schengen visa. However HU is ready to harmonise her approach to the invitation letter in order to be fully in line with the rules to be set up by the future EU-Ukrainian visa facilitation agreement.

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## 5. TYPES OF VISA ISSUED

A, B and C visas are issued. Roughly 70% of C visas are for a single entry. Depending on the case, multiple entry visa may also be granted to first time applicants. However, according to national legislation (Act XXXIX, 2001, on the entry and stay of foreign nationals, Section 9) "C" visas with double entry cannot be issued<sup>12</sup>. D visas are also issued with a validity of up to 1 year.

A special type of D visa, a so-called "national visa" can also be issued: it authorises the bearer to multiple entries, and to a stay in Hungary for more than three months. On the basis of this visa a residence permit is issued for a period not exceeding five years. This "visa" is not issued to persons seeking paid employment or engaging in gainful activity.

### EvalCom note

**It is recalled that under Directive 2004/38/EC<sup>13</sup> Member States have to grant every facility in issuing visas to family members of EU citizens, which includes the issuance of "B" and "C" visas with a long period validity for this category of persons.<sup>14</sup> The national law preventing the issuance of double entry visas should be abolished<sup>15</sup>**

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<sup>12</sup> Comment by Hungary: As far as HU knows some Schengen States issue double C visas, moreover the applicant can apply for a double entry C visa by filling the existing uniform visa application form. In practice the CIS makes it possible to issue double entry visas and in case it is required by the circumstances of the application a double visa is issued. Please note that during the 3 October 2006 debate on the Visa Code in the VWG, HU suggested creating the possibility to issue double entry C visas and this view was supportively received by COM and none of the MSs were against it.

<sup>13</sup> 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.

<sup>14</sup> Comment by Hungary: The present Aliens Act allows the issuance of a multiple entry visa with a validity not exceeding one year. The Hungarian visa manual instructs consulas to give to family members of EEA citizens the most favorable treatment, including multiple entry visa with long validity. It is foreseen that the Alien's Act to be amended will provide for multiple visa with a validity of most 5 years.

<sup>15</sup> Comment by Hungary: work is in progress in relation to amending national legislation to provide for this possibility

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## 6. THE VISA STICKER

### 6.1 General: printing and affixing

Visa stickers are printed only by expatriate staff within the secure zone. The sticker is placed over the "application" stamp. EvalCom noted that the sticker is not always affixed with the MRZ aligned to the edge of the page.

The head of the consular section and consuls regularly inspect the storage of visa stickers.

### 6.2 Use of the stamp of the issuing authority

The visa sticker is stamped by an expatriate administrative assistant who prints the sticker. Before stamping a final check is performed. EvalCom noted that in many cases the stamp spreads into the MRZ.

### EvalCom comments and recommendations

**Attention should be made not to stamp the MRZ of the sticker and to affix the sticker close to the edge of the passport in order to allow for machine reading.**

## 7. REFUSAL

### 7.1 Notification and motivation of refusal

The refusals of "A", „B" and „C" visas are notified verbally to applicants when they come to pick up the passport. A written notification may be given upon request (uniform refusal form). Decisions on "A", „B" and „C" visas cannot be appealed, but the applicant has the right to submit a complaint. This is stated on the written notification.

The provisions of Hungarian legislation concerning grounds for refusal correspond more or less to the provisions to the Article 5 (1) of the Convention implementing the Schengen Agreement and the CCI, part V.

As of May 2006 the Hungarian Visa Manual instructs the consulates as to the scope of facilitation to be given to family members of EEA citizens. Attention is drawn to the fact that refusals of an application from family members of the EEA citizens shall be motivated in details and that such refusals shall be notified individually.

### 7.2 Refusal rates

Refusal rates are extremely low (average in 2005: 0.45%. 2006 (January-August: 0,48%) and significantly lower than average refusal rates of the Member States applying the Schengen acquis in full.

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## EvalCom comments and recommendations

**Compared to the average of all Member States, the refusal rate is extremely low and raises the question whether the applications and supporting documents are really checked properly<sup>16</sup>.**

**Awareness of the issue of illegal immigration risk should be increased as this will become a key issue/fundamental issue when Hungary starts issuing Schengen visa.<sup>17</sup>**

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<sup>16</sup> Comment by Hungary: The MFA of Hungary as well as the Hungarian missions abroad have been analysing the visa issuing procedure of the missions of Schengen States for many years in order to fully harmonise our procedure to the Schengen/community legislation and practice. Hungarian missions also attach utmost importance to the local consular cooperation and implement its decisions. Based on these experiences, the MFA does feel that the supporting documents are properly checked at the consular section in Kiev. The reasons of the relatively low rejection rates could be summarised as follows.

We have to distinguish between two types of negative decisions in the visa procedure: refusal to examine the application and refusal to issue a visa. The Common Consular Instructions is quite laconic as regards the delimitation and the division of competencies on this matter. For instance, the CCI says, 'passports which do not have space free for affixing the sticker (...) shall be refused'. However, it does not say in which part of the procedure shall this decision be taken.

Traditionally Hungarian visa administrators at the counter had wider possibility to refuse to examine an application if they detected evident shortcomings than some Schengen missions' administrative staff. In such cases the administrator did not enter the application into the IT, and these cases did not figure in the statistics either, however these cases can also be considered as refusals.

The new Hungarian Visa Manual (entered into force in May 2006) regulates this part of the visa procedure more restrictively. The examination of the application shall be refused only, if 1.) the mission is not entitled to process the application; 2.) the foreigner did not appear in person and his/her trust deed is not accurate or his/her family status can't be detected; 3.) the application form is incompletely filled in or is not signed by the applicant and after the call from the administrator/consul the applicant fails to do the necessary corrections; 4.) the passport is not valid or does not have space for the sticker or damaged.

Even though the rule has become more restrictive, hundreds of applications are still refused to be examined due to the above-mentioned basic deficiencies.

<sup>17</sup> Comment by Hungary: The attention of visa issuing consulates, especially in neighbouring countries was called at the end of 2005 to a more thorough examination of visa applications and supporting documents and refuse applications if there is a doubt as to the good faith of the applicant, the authenticity of the supporting documents or information provided. Hungary is aware of the increased migration risk it will be exposed to once she will have started to fully implement the Schengen acquis. The Hungarian policy aims at preparing both the consulates and the applicants to a gradual strengthening of the visa regime so that Hungary's entry into the Schengen zone would not necessitate a quick change in practices either for our own consular staff or the third country nationals.

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## 8. DESTRUCTION OF VISA STICKERS

If a mistake is made, the consular assistant registers the mistake in the so-called „visa registry book”. It also has to be registered in the Consular Information System (CIS) and the information is transmitted to the MFA. A red cross is drawn across the sticker and a stamp “cancelled without prejudice” is put on it.

If the erroneous sticker has already been placed in the passport, the sticker is photocopied and kept in the file. Erroneous stickers are returned to the head of chancery and kept in a safe. They are destroyed by burning once every three months with minimum two persons present.

## 9. FILING

Visa application files are stored in the basement of the embassy for one year after the expiry date of the visa and for 5 years if the application was refused. Files of approved and refused applications are kept separate. Files can be easily found, as they are stored by their CIS number. However, in the files checked by EvalCom no evidence was found as to whether travellers are individuals or travelling with a group.<sup>18</sup>

Destruction of old application files is done in January-February, and it takes place in one of Kiev’s waste processing plants – using acid - under the supervision of a consul.

## 10. SECURITY

(NB security aspects of the building dealt with in chapter 2)

### 10.1 Staff

#### 10.1.1 Division of tasks between expatriate staff and local staff

Local staff: 6 Ukrainians (for tasks see 4.1 and 11.3.1)

Expatriate staff: Head of consular section, 4 consuls, 6 consular administrators (for tasks see 4.2, 6.1-6.2 and 11.3.1).

#### 10.1.2 Checks upon recruitment and further evaluation

Local staff goes through a security check implemented by the Ministry before their contract is signed. The consulate asks for a reference letter from the previous employer of the local employee (applicant) and also exchanges information on this person with other EU consulates in the framework of local consular cooperation.

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<sup>18</sup> Comment by Hungary: It is always marked on the file if the common supporting documents are stored in another file. In that specific file the name list of the group can also be found and thus the whole group can be identified.

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## 10.1.3 (Potential for) misuse of professional position

Five local members of staff are rotated monthly - three who work at the counters and two who type in data of the applications.

Due to the use of queue numbers applicants are randomly directed to counters, which also prevents the formation of undesirable contacts between applicants and staff. Staff at the counters is supervised by video cameras as well.

One of the consuls is at the same time the security officer of the Embassy and his office room is next to the area where local staff works.

### EvalCom comments and recommendations

**It is recommended that all local staff members are included in the staff rotation scheme.**

## 10.2 Sensitive documents

Visa stickers are sent by diplomatic pouch to the embassy, received by the head of the financial department and stored in a strong room. The reception of new visa stickers is confirmed in the CIS by a consul as soon as possible after arrival.

Periodically 1.000 visa stickers are given to the head of the visa section. They are stored in a safe in the room where printing takes place. Each visa administrator is given 100 stickers. Visa stickers handed out to printing staff are stored in individual metal containers. During the day when printing staff leaves the room and also at the end of the day the boxes are put in safes placed in the same room where printing takes place (there are two safes in the room). Visa stamps are stored in the same way. Access to the safes is limited to those whose stickers are stored therein. The codes of the safes are stored in sealed envelopes in the strong room that can be opened by a consul in the presence of another person, in case of necessity.

Submitted passports with application forms are kept in an open shelf in a consul's office prior to handling.

### EvalCom comments and recommendations

**EvalCom noticed that a large number of files - still to be verified by the consul(s) - are kept together with the applicants' passports on shelves in the office of the consul. It is recommended that adequate protection is given to those passports by locking them in safely after working hours.**<sup>19</sup>

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<sup>19</sup> Comment by Hungary: The documents are on the shelves during working hours when these applications are being decided upon but are locked away after working hours.

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## 10.3 IT

### 10.3.1 Entry/access

Every user has his/her own individual login name and password. Passwords must be changed every three months. Workstations and servers are protected by screensavers with passwords (blanked automatically after 2-3 minutes).

Access to CIS is managed by the local system administrator. The MFA has prescribed the access different types of users can have. Locals can only register applications, expatriate administrators can register and print stickers, consuls can register, print, consult home authorities and take decisions.

Replication of CIS database takes place four times a day. Backup save of the database occurs once a day, to the other HDD of the CIS server and to the BDC.

UPSs make possible controlled shutdown and saving all documents.

### 10.3.2 Encryption

During replication data is encrypted.

## 10.4 Data protection

Consulate staff members – including consuls – are not allowed to do unmotivated search in the entry ban list. It should be noted that this is technically possible. In case of a hit in the entry ban list the concrete hit is seen by the consul. He has to register in a log book that he had access to the list.

Every staff member has to sign a commitment that data processed during work is not forwarded to unauthorised persons.

### EvalCom comments and recommendations

**It should be ensured that it is technically not possible to search in black lists (in future SIS II) without the search being linked to a specific visa application file.**

## 11. EDUCATION AND TRAINING

EvalCom was informed that expatriate staff members must participate in a comprehensive training course of consular and visa affairs – ranging from consular law and visa regulations to detecting falsified documents - and pass an exam before being posted abroad (also if the person has occupied a consular post before). The staff member receives a certificate which is kept in his/her personal file. The ministry continuously informs and instructs all consular staff members abroad of any modifications of relevant legal instruments. Administrative staff is informed about new rules and regulations and trained by the consuls at regular staff meetings. EvalCom was informed that the ministry and the head of the consular section supervise the implementation new instructions and rules. Finally EvalCom was informed that newly posted consuls and administrative assistants are informed in detail about local conditions and specifics.

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Certain tendencies, risks, test cases of falsifications or dubious applications are also discussed regularly in staff meetings involving the local staff, as well. The consuls also train local staff in necessary aspects of visa processing and client management.

In summer 2005 a consular training on the future rules of issuing Schengen visas were held in Budapest for all the Hungarian consuls posted abroad with the participation of the consuls of Kiev as well.

Training sessions are organized by the ministry on a regional basis for colleagues posted in different countries of a region who face similar challenges. A regional training session was held in Kiev on 10-11 February 2006. The embassy has initiated consular exchange with the Austrian and German consulate. At three occasions a one day visit of one consul and one administrator took place with participation of staff members from Uzhgorod and Beregovo as well.

## 12. EQUIPMENT FOR DETECTING FALSE DOCUMENTS

Equipment for detecting false documents (i.e. UV lamp, retro-viewer, magnifiers) is accessible for every staff member and passports are checked by both local and expatriate staff.

Every expatriate staff member receives instruction on identifying false documents as part of the consular training. Local staff is trained by the expatriates. Experience gained on site in detecting falsified documents is shared through staff meetings. Detected falsification is documented and made known to all staff members.

Specimens of Ukrainian and Georgian passports and stamps are also available for comparison. The staff has access to two databases on specimen of travel documents. The embassy forwards information on detected false documents to the MFA and through it to the Hungarian Border Guard, as well as shares this information within LCC.

False for forged travel documents are sent to the Ukrainian MFA. Since the beginning of 2006 on forged document and one forged visa sticker.

## 13. CANCELLATION OF VISA STICKERS AT THE BORDER

EvalCom has been informed that a relatively high number of visas issued by Hungarian consular posts in Ukraine are cancelled at the border. According to the Embassy, consular posts in Ukraine are informed of cancellations of visa at the border through the MoI and MFA. According to the Embassy a relatively small number of the cancelled visas issued by Hungarian consular posts in Ukraine are issued in Kiev. While processing a visa application, the CIS automatically searches for hits in the banned persons list. EvalCom was informed that some of the visa applicants entered in the banned persons lists obtain new passports with slightly adjusted names, thus there is no hit. However, many of these persons are recognised by the border police, who cancel the visa.

### EvalCom comments and recommendations

**EvalCom recommends adapting the CIS in order to ensure that a hit is also generated in case of similar names.<sup>20</sup>**

<sup>20</sup> The recommendation will be taken into consideration and discussed by the IT experts of the relevant Hungarian authorities during the revision of the CIS.

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## 14. GENERAL CONCLUSIONS AND RECOMMENDATIONS:

EvalCom considers that, on the basis of the checks carried out and the information gathered, Hungary, as far as its Embassy in Kiev is concerned, may be in a 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 Hungary in order for being in a position to achieve this goal:

### 1. Organisational aspects

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

It is recommended that due attention is given to possible increase in the risk of pressure on staff when Hungary commences to issue Schengen visas and it is recommended that all local staff members are included in the staff rotation scheme.

EvalCom noticed that a large number of files - still to be verified by the consul(s) - are kept together with the applicants' passports on shelves in the office of the consul. It is recommended that adequate protection is given to those passports by locking them in safely.

### 2. Practice related to the submission and processing of 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.

With regard to applications received by the Hungarian honorary consul in Tbilisi, EvalCom considers it unacceptable that Georgian authorities are in practice able to screen an application; therefore this channel of transmission should be abolished.

Attention is drawn to the fact that a recommendation letter from an honorary consul can under no circumstances substitute an in depth examination of the application and the interview should be carried out by duly authorised consular staff and cannot be delegated to an honorary consul.

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

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# RESTREINT UE

It is recalled that the CCI does not contain any provisions on "express" processing of visa applications.

EvalCom strongly recommends that sufficient attention is paid to the signature on the application form.

Measures should be taken to reduce the duration of the consultation procedure with regard to the full application of the Schengen Acquis, both concerning Annex 5B consultations and, in order to prevent visa shopping, concerning 5A consultations.

It is recalled that the proof of being in possession of TMI will have to be verified by the consulate during the processing of the visa application once Hungary will apply the Schengen acquis in full. The TMI will have to be in conformity with the CCI requirements.

Compared to the average of all Member States, the refusal rate is extremely low and raises the question whether the applications and supporting documents are really checked properly. Awareness of the issue of illegal immigration risk should be increased as this will become a key issue/fundamental issue when Hungary starts issuing Schengen visa.

Regarding the checking of the national blacklist, EvalCom recommends adapting the CIS in order to ensure that a hit is also generated in case of similar names.

It should be ensured that it is technically not possible to search in black lists (in future SIS II) without the search being linked to a specific visa application file.

### 3. Legislative aspects

EvalCom recalls the importance of measures to be taken to permit Hungary to represent other Member States and be represented by other Member States once Hungary will apply the Schengen acquis in full, and acknowledges that steps have been taken to that end.

### 4. Bilateral agreements

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

EvalCom recalls that bilateral agreements on the exemption from presenting an invitation must be denounced in due time before application of the Schengen acquis in full.

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\*

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

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ANNEX I

## VISAS ISSUED BY THE HUNGARIAN 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	Rejection Rate in %
January	0	238	2233	2471	9	2480	2	0,000806	0,08%
February	0	238	2096	2334	21	2355	4	0,001696	0,17%
March	0	278	3395	3673	13	3686	10	0,002706	0,27%
April	0	702	5469	6171	9	6180	11	0,001777	0,18%
May	0	478	2980	3458	4	3462	22	0,006315	0,63%
June	0	1166	4025	5191	41	5232	17	0,003239	0,32%
July	0	1638	4530	6168	38	6206	10	0,001609	0,16%
August	0	1753	5555	7308	43	7351	94	0,012624	1,26%
September	0	859	3853	4712	18	4730	14	0,002951	0,30%
October	0	267	3676	3943	8	3951	10	0,002525	0,25%
November	0	287	2952	3239	14	3253	35	0,010645	1,06%
December	0	453	5237	5690	8	5698	17	0,002974	0,30%
<b>Total</b>	<b>0</b>	<b>8357</b>	<b>46001</b>	<b>54358</b>	<b>226</b>	<b>54584</b>	<b>246</b>	<b>0,004486</b>	<b>0,45%</b>

## VISAS ISSUED BY THE HUNGARIAN 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	Rejection Rate in %
January	0	212	1754	1966	18	1984	1	0,000503	0,05%
February	0	244	1862	2106	7	2113	13	0,006058	0,61%
March	0	228	4473	4701	5	4706	10	0,002747	0,27%
April	0	724	5878	6602	9	6611	10	0,001509	0,15%
May	3	536	3650	4189	27	4216	31	0,007291	0,73%
June	0	0	0	0	0	0	0	0,000485	0,05%
July	0	0	0	0	0	0	0	0,004388	0,44%
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0,011168</b>	<b>1,12%</b>

## **Steps taken or planned to be taken in the near future by Hungary as regards certain remarks of the SchEval team in its Kiev report**

1. The Embassy in Kiev was instructed on October 26 to examine whether the Georgian MFA could be replaced by any alternative intermediary, like UPS or DHL to forward some of the visa applications from Georgia to the Hungarian Embassy in the Kiev. In the longer run Hungary would like to be represented by a Schengen partner in Georgia like in many third countries where Hungarian foreign representations don't exist. The draft of the new Aliens' Act already contains a provision whereby Hungary could conclude representation agreements with other EU MSs.
2. It is the policy of the Hungarian MFA to exclude the handling of cash from the daily routine of consulates. Some missions have been given a derogation in places where the banking system is underdeveloped, unreliable or the banking cost is unreasonably high. The Ukraine was one of these places. However after the report had been received the Embassy in Kiev was repeatedly instructed to investigate the practice of other EU MSs and the banking sector and look for a bank if the results of the investigation so indicate. The Hungarian Consulate General in Uzhgorod has already agreed with a bank on handling visa and other consular fees.
3. The Embassy in Kiev communicated that the renewal of accreditation of the travel agencies will take place during October and November. All accredited companies will be provided with identification cards to be produced by the Embassy and each card will bear the scanned photo of the person to whom it is issued. In order to more closely monitor the accredited travel companies accreditation will have to be renewed every half year.
4. The MFA has changed the user rights of the CIS so that no one at any of the visa issuing missions has access to the entry ban list to do an unmotivated search. All cases where there is a suspicion that the applicant might have changed his name are referred to the central authority.
5. A separate chapter is dedicated to the special status of the family members of EEA citizens in the Visa Handbook. Nevertheless, in addition to that, having received the Kiev report that contains a reference to the special treatment of family members of EEA citizens, the MFA once again summarized the rules in a circular telegram to call the attentions of the consuls to this issue.
6. Lessons have been drawn from the Kiev report and all Hungarian consulates have been informed of the outstanding remarks. Among other things consulates anew have been instructed to take good care of stamping so that the stamp would not cover the MRZ zone and that the visa sticker is aligned with the edge of the passport. Checking the signatures of the applicants was also underlined, as well as the handling of visa stickers not to be good for use any longer (destroying the kinegramm).
7. A joint instruction of the Consular Department and the Security Department of the MFA was issued to call the attention of the staff of Hungarian missions and especially those who work in the consulates to the phenomena related to corruption.

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