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NOTE

from: Netherlands delegation

to: Visa Working Party

No. Cion prop.: 11752/1/06 VISA 190 CODEC 771 COMIX 662 + ADD 2 (en)

Subject: Draft Regulation of the European Parliament and of the Council establishing a
Community Code on Visas
- Definition of "PROCESSING"

Need for a definition

There is a long existing need to have this term defined, as in practice there is confusion and there are different interpretations – this has also been noted during Schengen evaluation missions.

Furthermore, the different views on whether an external service provider can charge an additional service fee (on top of the "visa fee") relate to the lack of a clear definition of this term.

At the moment, several terms are used (in the present CCI, in daily practice, in the draft Visa Code): handling, processing, administrative costs of processing the visa application, handling fee. In the view of the NL delegation, it would be useful to clearly define and use consistently (one of) these terms.

Suggestion for a definition

"Processing" (or "handling") is related to time and costs, and also to the moment at which a file can be called an "application" and a person subject to the visa requirement an "applicant" (ref. Art. 10 visa code).

The NL delegation would therefore define "processing" to be that part of the visa-process which starts when an application has been submitted to the consulate and ends when the visa/refusal has been sent or handed out to (the intermediary of) the applicant. "Processing" therefore consists of the following elements:

- assessing the correctness and completeness of an application;
- verifying the competence of the consulate and the payment of the charged fee;
- interviewing the applicant and/or consulting visa authorities, if applicable;
- entering the relevant application data into the EU visa information system;
- deciding on the application;
- printing and affixing the visa sticker;
- producing information for the applicant about the reasons for refusal and the right to appeal against the decision, if applicable;
- giving notice of the decision on the application, at which point the travel document and/or refusal decision may be collected by the applicant and
- filing the application and accompanying documents.

Although other tasks (such as providing information, making the application form available, local consular cooperation, etc.) also have to be performed by the consulate, such tasks are not part of the "processing" and are not related to the processing fee and processing time. To illustrate this, for instance "providing information" should not be regarded as processing, since otherwise an applicant should already pay when requesting information and the processing time would already commence – whereas providing information does not always result in submission of an application.

Relation to External Service Provider

The activities that are part of the above definition of "processing" are in principle to be carried out by the consulate and cannot be done by an external service provider.

An external service provider may carry out tasks which take place before or after "processing".

Consulates themselves will also carry out the necessary tasks in this "pre-phase" or "after-phase", when the applicant decides not to make use of the external service provider and applies in person to the consulate.

Relation to fee

In the opinion of the NL delegation, the fee should be a reflection of the costs, but it is not an essential principle that the fee should exactly cover the costs (in comparison: border controls also cost money, which are not paid for by a fee requested from people crossing the border). The fee should cover the activities belonging to "processing" but could also contribute to the "overhead costs" related to visas.

The question remains whether or not the costs of taking biometrics should be covered by the fee. As Decision 2006/440/EC states that the fee increase takes into account the introduction of biometrics and the VIS, the NL delegation consider that the costs of taking biometrics should be covered by the fee. However, taking of biometrics in our view is not part of the processing of an application; at present, having a photograph taken is also not part of the processing.
