

## II

(Acts whose publication is not obligatory)

## COUNCIL

## COUNCIL DECISION

of 12 July 2002

on the adaptation of parts III and VIII of the common consular instructions

(2002/585/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Regulation (EC) No 789/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications <sup>(1)</sup>,

Having regard to the initiative of the Kingdom of Belgium and the Kingdom of Spain,

Whereas:

- (1) It is necessary to ensure the maximum possible harmonisation of the processing of visa applications lodged through travel agencies with the diplomatic missions and consular posts of the Member States in order to reduce the risks of visa shopping and abuse of procedure.
- (2) It is necessary to incorporate into the common consular instructions rules which supplement in greater detail the arrangements for and monitoring of cooperation with private administrative agencies, local travel agencies and package tour operators in the processing of visa applications with the diplomatic missions and consular posts of the Member States.
- (3) The purpose of defining the conditions for cooperation with travel agencies is not to inhibit free competition between them but solely to establish the conditions on which diplomatic missions and consular posts may cooperate with travel agencies to process visa applications.

(4) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not participating in the adoption of this Decision and is not bound by it or subject to its application. Since this Decision aims to build upon the Schengen *acquis* under the provisions of Title IV of the Treaty establishing the European Community, in accordance with Article 5 of the said Protocol Denmark will decide within a period of six months after the Council has adopted this Decision whether it will transpose it into its national law.

(5) As regards the Republic of Iceland and the Kingdom of Norway, this Decision constitutes a development of the provisions of the Schengen *acquis* falling within the area referred to in Article 1(B) of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* <sup>(2)</sup>.

(6) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, those Member States are not participating in the adoption of this Decision and are therefore not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

In point 4 of part III of the common consular instructions the following paragraph shall be added:

'Part VIII.5 contains more detailed rules on visa applications processed by private administrative agencies, travel agencies and tour operators and their retailers.'

<sup>(1)</sup> OJ L 116, 26.4.2001, p. 2.

<sup>(2)</sup> OJ L 176, 10.7.1999, p. 31.

*Article 2*

The following section shall be added to Part VIII of the Common Consular Instructions:

**5. Visa applications processed by private administrative agencies, travel agencies and package tour operators**

The basic rule for visa applications is that there should be the possibility of a personal interview. However, this may be dispensed in so far as, where there is no reasonable doubt as to the good faith of the applicant, the purpose of the journey or the applicant's actual intention of returning to the country of origin, a reputable and solvent entity, organising trips for groups, supplies the diplomatic mission or consular post with the necessary documentation and vouches, with reasonable reliability, for the applicant's good faith, the purpose of the journey and the applicant's actual intention of returning (see point III.4).

It is both common and useful, particularly in countries with a large surface area, for private administrative agencies, travel agencies, and tour operators and their retailers to act as authorised intermediaries of the applicant. These commercial intermediaries are not uniform in nature as they do not enter into the same degree of commitment in relation to clients entrusting them with the processing of a visa; so that, the degree of solvency and reliability expected of them will, in principle, be directly proportional to their degree of involvement in the overall planning of the journey, accommodation, medical and travel insurance, and their responsibility for the client's return to the country of origin.

*5.1. Types of intermediary*

- (a) The simplest type of intermediary are private administrative agencies, where the assistance given to the client involves only the supply of identity and other supporting documents on the client's behalf.
- (b) A second type of commercial entity is that of transport agencies or local travel agencies, in some cases linked to air carriers, whether or not these are flag carriers, involved in scheduled or charter passenger transport. Their assistance to the client includes the supply of supporting documents as well as, where appropriate, ticket sales and hotel reservations.
- (c) A third type of intermediary is constituted by tour organisers or operators, being natural or legal persons organising package tours on a non-occasional basis (preparation of travel documentation, transport, accommodation, other tourist services not ancillary to these elements, medical and travel insurance, internal transfers, etc.) which sell such package tours, or offer them for sale directly or via a retailer or travel agency contractually linked to the tour operator.

For the tour operator and the agency retailing the package trip, the visa applicant is no more than the consumer of the arranged trip, with the offer to process the visa application being part of the arrangement. This third, complex type of intermediary service comprises several phases and facets which can be subject to objective monitoring: business documentation, management, the actual completion and destination of the trip, accommodation and scheduled group entries and exits.

*5.2. Harmonisation of cooperation with private administrative agencies, travel agencies, tour operators and their retailers*

- (a) All diplomatic missions and consular posts located in the same city should endeavour to achieve harmonised application at local level of the guidelines set out below based on the type of intermediary role performed by the agencies concerned. Although it is for each diplomatic mission or consular post to decide whether or not to work with agencies, they must retain the option of withdrawing accreditation at any time if experience and the

interests of a common visa policy so dictate. If a diplomatic mission or consular post decides to work with an agency, it must adhere to the working practices and procedures set out in this section.

- The consular posts of the Member States must be particularly vigilant and will cooperate closely in the evaluation and exceptional accreditation of private administrative agencies. The processing of their visa applications will be subject to meticulous examination, with checks being conducted in every case on the supporting documents of the visa holder and on those relating to the licence and entry in the commercial register of the private agency.
  - For the evaluation of visa applications lodged by transport agencies or local travel agencies, particular attention must be paid to the circumstances of the applicant and the case-by-case verification of the supporting documents. The consular posts must cooperate closely, reinforcing their respective mechanisms for detecting irregularities in the agencies and in the carriers themselves, and, in support of those mechanisms, irregularities committed by agencies must be notified at the level of local and regional consular cooperation.
  - The criteria governing the accreditation of travel agencies (tour operators and retailers) will, *inter alia*, take into account: the current licence, the commercial register, the company statutes, contracts with the banks which they use, up-to-date contracts with Community recipients of tourism services, which must include all the elements of the package trip (accommodation and tour package services), contracts with airlines, which must include outward and guaranteed, fixed return journeys, as well as the required medical and travel insurance. Visa applications lodged by these travel agencies must be carefully scrutinised.
- (b) In the context of local consular cooperation, diplomatic missions and consular posts will also endeavour to harmonise working practices and procedures as well as the criteria for monitoring the proper functioning of private administrative agencies, travel agencies and tour organisers (tour operators and retailers). Such monitoring must at least comprise checks at any time on accreditation documentation, spot checks involving personal or telephone interviews with applicants, verification of trips and accommodation, and, wherever possible, verification of the documents relating to group return.
- (c) There must be an intensive exchange of relevant information on the operation of private administrative agencies, travel agencies and tour organisers (tour operators and retailers): notification of irregularities detected, regular exchanges concerning refused visas, communication of detected forms of travel document fraud and failure to effect scheduled trips. Cooperation with private administrative agencies, travel agencies and tour organisers (tour operators and retailers) must be discussed at the regular meetings organised within the framework of common consular cooperation.
- (d) At the level of local consular cooperation, lists must be exchanged of private administrative agencies, travel agencies and tour organisers (tour operators and retailers) to which accreditation has been given by each diplomatic mission or consular post or from which accreditation has been withdrawn, together with the reasons for any such withdrawal.
- (e) Private administrative agencies, travel agencies and tour organisers (tour operators and retailers) must submit to the diplomatic missions and consular posts to which they are accredited the names of one or two staff authorised as intermediaries to lodge visa applications.'

### Article 3

This Decision shall apply from the date of its publication in the *Official Journal of the European Communities*.

*Article 4*

This Decision is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 12 July 2002.

*For the Council*  
*The President*  
T. PEDERSEN

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