

II

(Acts whose publication is not obligatory)

COUNCIL

**COUNCIL DECISION
of 22 December 2003****amending the third subparagraph (Basic criteria for examining applications) of Part V of the
Common Consular Instructions**

(2004/14/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 ⁽¹⁾,

Having regard to the initiative of the Italian Republic,

Whereas:

- (1) The European Councils of Tampere, Laeken, Seville and Thessaloniki have called on the Member States to develop their common visa policy further and to step up local consular cooperation between their representations in third countries.
- (2) An analysis of the data concerning illegal immigration has shown that short-term visas (tourism, business, study, work or family visits) are the ones most often used for the purpose of regularly entering the territory of the Contracting Parties to the Schengen Convention and then going underground when the visa expires.
- (3) In order to assess an immigration risk, it appears necessary further to step up local consular cooperation in determining what supplementary and/or additional documents should be required for issuing visas and as regards the adoption of common mechanisms for detecting false or falsified documents more effectively.
- (4) Among the various factors on which the assessment of an immigration risk must be based, the outcome of the interview to which the visa applicant is subjected by the diplomatic mission or consular post is also of fundamental importance.
- (5) Diplomatic missions and consular posts should therefore be in a position to exercise more effectively the powers they possess to assess an immigration risk.

- (6) 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 taking part in the adoption of this Decision, and is not bound by it or subject to its application. As this Decision builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Decision whether or not it will transpose it into its national law.
- (7) As regards Iceland and Norway, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning 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* ⁽²⁾, which falls within the area referred to in Article 1, point A of Council Decision 1999/437/EC ⁽³⁾ on certain arrangements for the application of that Agreement.
- (8) This Decision constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 19 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* ⁽⁴⁾; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

⁽¹⁾ OJ L 116, 26.4.2001, p. 2.

⁽²⁾ OJ L 176, 10.7.1999, p. 36.

⁽³⁾ OJ L 176, 10.7.1999, p. 31.

⁽⁴⁾ OJ L 131, 1.6.2000, p. 43.

- (9) This Decision constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* ⁽¹⁾; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (10) This Decision constitutes an act building upon the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession,

tional supporting documentation, agreed through local consular cooperation if possible, may also be required. The diplomatic mission or consular post must also draw on local consular cooperation to enhance its capacity to detect false or falsified documents submitted in support of some visa applications. If there is any doubt as to the authenticity of the papers and supporting documents submitted, including doubt as to the veracity of their contents, or over the reliability of statements collected during interview, the diplomatic mission or consular post shall refrain from issuing the visa.'

HAS ADOPTED THIS DECISION:

Article 1

The third subparagraph (Basic criteria for examining applications) of Part V of the Common Consular Instructions shall be replaced by the following:

'The diplomatic mission or consular post shall assume full responsibility in assessing whether there is an immigration risk. The purpose of examining applications is to detect those applicants who are seeking to immigrate to the Member States and set themselves up there, using grounds such as tourism, business, study, work or family visits as a pretext. Therefore, it is necessary to be particularly vigilant when dealing with "risk categories", unemployed persons, those with no regular income, etc. To the same end, fundamental importance attaches to the interview held with the applicant to determine the purpose of the journey. Addi-

Article 2

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

Article 3

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

Done at Brussels, 22 December 2003.

For the Council
The President
A. MATTEOLI

⁽¹⁾ OJ L 64, 7.3.2002, p. 20.