



STEFAN

**BATORY
FOUNDATION**

Sapieżyńska 10a
00-215 Warsaw Poland
tel. |48 22| 5360200
fax |48 22| 5360220
batory@batory.org.pl
www.batory.org.pl



Warsaw, Kyiv, 30.03.2012

Joannes De Ceuster
European Commission
DG Home Affairs
B-1049 Brussels

Joanna Fomina
The Stefan Batory Foundation
Sapieżyńska 10A
00-215 Warszawa
Poland

Iryna Sushko
Europe without Barriers
Volodymyrska 42, office 21,
Kyiv, Ukraine

subject: long-term multiple Schengen visas

Dear Mr De Ceuster,

On behalf of members of the Coalition for the European Continent Undivided by Visa Barriers (Visa-free Europe) we would like to ask for a clear and unambiguous explanation of the DG Home Affairs of the European Commission with regard to the terms of issuance and use of multiple long-term visas. The Community Code on Visas provides for issuance of multiple uniform visas for the period of up to five years. However the document does not provide an exhaustive and precise explanation for either on what basis these visas can be granted, or how they can be used. As a result, very few visas with validity of up to five years are issued by EM MS consular services, whereas holders of uniform visas often face problems when travelling on the territory of EU MS with different purposes (tourism vs. business) as well as travelling to member states other than the one

that issued the visa. We would like to ask you to clarify this situation and help thousands of people wishing to visit EU MS to enjoy their rights.

The Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) seeks to achieve better availability of long-term multiple uniform visas valid for up to five years for several categories of applicants having close links to the EU which are considered trustworthy, have positive visa history and do not pose risk of illegal immigration. Wide availability of such visas and the possibility of frequent trouble-free travel to the EU by people in their possession has enormous significance for economic, cultural, educational and people-to-people contacts between the EU and its eastern neighbours as well as a direct influence on 'soft power' exercised by the EU in its neighbourhood. It also needs to be emphasised that the very concept of the common visa policy is based on the validity of uniform visas on the entire territory of the Member States.

In view of the above, we are worried by the fact that so few long-term visas are issued: according to monitoring by the "Europe without Barriers"¹, a Ukrainian NGO, only about 1% of all visas issued in Ukraine have more than 1 year period of validity¹. This is related to unclear regulations regarding what kind of documents are required to prove that a give person has got "close links" to the EU and is eligible for a long-term visa. Some consular services demand special invitations showing that a person in question is going to cooperate with an institution in an EU MS for a period of one year or longer. But this demand puts in a problematic position scholars, students or civil society activists who not necessarily work with one institution for a long period of time, yet are required to come to the EU MS for conferences, meetings, seminars on a regular basis. They end up being issued short-term visas for every separate conference or seminar. Those travelling more often need to exchange their passports after a year or two due to lack of empty pages for new visas. Clearly this was not the intention underlying the Community Code on Visas.

Even a more serious problem regards holders of multiple visas travelling to the EU MS with tourist purposes. Since multiple visas are usually issued to people who can demonstrate their cooperation with a given institution (commercial, non-governmental, educational, etc) in the EU MS, the purpose of their visa is often coded as "business". It is a quite a common practice that holders of such visas travelling to the EU on tourist purposes are detained by the authorities of some Member States, have their visas annulled or revoked and deported to their home countries on the grounds that they use their visas not in accordance to the purpose of their issuance. A recent case widely quoted in the Ukrainian press² involved an organised Ukrainian tour group on a short coach trip to Dresden (Germany) and Krakow (Poland). On 10 March 2012, while controlling the whole group, German police found some of the tourists to be in possession of long-term multiple Schengen visas issued by Polish consulates for the main purpose of business trips. Those tourists were ordered to leave the bus, briefly detained, had their visas cancelled and were ordered to travel back to Ukraine. Similar cases abound, with Ukrainian nationals in possession of Polish-issued Schengen visas being most frequently targeted. In fact it is already conventional wisdom among Ukrainian travellers that e.g. visitors with Polish-issued visas are almost always turned back at the Hungarian and Slovak land border crossings.

¹ http://novisa.com.ua/upload/file/Viza_Monitor_Prav1-2.pdf

² See link in Ukrainian <http://www.pravda.com.ua/news/2012/03/13/6960494/>

The Ukrainian Ministry of Foreign Affairs has asked German embassy in Kyiv for explanation of this practice and has received a communication³ stating that in case of entry into Germany with a visa issued by another Member State and with a different purpose that indicated in the visa, the following criteria should be met:

- the visa should have been previously used for travel to the Member State that had issued it, in accordance with the purpose indicated in the visa,
- the fact of having used the visa according to its purpose needs to be demonstrated,
- the purpose of the trip to Germany needs to be supported by documentary evidence.

Furthermore, according to German embassy, in case of multiple Schengen visas previously not used according to their purpose, in order to travel to another Member State with another purpose (e.g. tourism) the visa holder should have his/her visa cancelled and apply for a new visa in the consulate of this other Member State.

Such practice of the authorities of Germany and other Member States causes a wide range of problems. First of all, the practice of frequent challenging of visas issued by other Member States **undermines the fundamentals of common visa policy**. Common visa policy, as envisaged by Article 77(2)(a) of the Treaty on the Functioning of the European Union and enacted in the Visa Code, is in danger of becoming a fiction rather than reality. A Schengen visa issued by a Polish consulate, even if valid for "Schengen states", as displayed on the visa sticker, becomes in practice a visa with territorial validity limited to Poland, since travel to other Member States puts the visa holder at risk of being arrested and expelled. Such cases as described above are a clear sign of blatant mistrust at consular authorities of other Member States, unacceptable in a common area of freedom, security and justice.

Second, **the present situation of considerable legal uncertainty puts in a very uncomfortable position both visitors as well as tour operators**. The rule providing that uniform visas are valid for the entire territory of the Member States (Article 2(3) of the Visa Code) is being eroded in a way that is both not transparent and totally unpredictable to visa holders. Border guards and police of different EU MS and even those of the same MS act in an incoherent and uncoordinated way, based on arbitrary decisions. It needs to be emphasised that the criteria for cancelling visas as given by German embassy in answer to Ukrainian MFA are (a) without any legal basis in the provisions of the Visa Code, and (b) have not been published in any official source of information and are hence inaccessible to the visa holders. Application of such unofficial and arbitrarily set of criteria is clearly contrary to the principle of rule of law.

Third, **this practice discourages EU tourism** among people qualifying for long-term multiple visas, which are precisely the kind of middle-class visitors the EU seeks to attract. Each such incident reported in Ukrainian or Russian media results in greater comparative advantage of destinations like Turkey, Egypt or Israel over holiday destinations located in EU Member States. The proposed solution of having a multiple Schengen visa cancelled in order to apply for a new (single) visa for a tourist trip is clearly unpractical and would cause most potential visitors to cancel their trips. Tourism sector in crisis-stricken Southern European countries can be adversely affected in the very moment when those countries are trying to attract more visitors.

We would like to ask the European Commission for a clear and unambiguous official explanation regarding the use of multiple long-term visas as envisaged by the Community

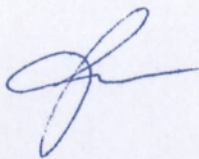
³ As quoted by our partner organisation "Europe without Barriers" on its website <http://www.novisa.org.ua/analytic/yak-ybezpechitis-vid-nepriemnostei-v-nimechchini-z-shengenskimi-vizami-inshix-krain-chleniv-es/ua> (link in Ukrainian).

Visa Code. First of all, we would ask to specify the grounds for multiple long-term visas being issued and second – to clarify the situation of holders of multiple visas wishing to travel for different purposes to the EU. In order to make the Commission's reply as straightforward as possible, we would like to ask to comment upon a hypothetical situation: a civil society representative from Ukraine holding a Schengen visa valid for two years issued by a Polish consulate in view of her cooperation with Polish NGOs plans to visit Spain for a holiday. Is she supposed to apply to a Spanish consulate for another visa for the purpose of tourism (and thus have her current visa cancelled, as she cannot hold two valid Schengen visas simultaneously) or is she allowed to travel for her holiday using her current Polish-issued visa? If yes, how can she justify her situation if being stopped by the Spanish police or border guards on grounds of using her visa not in compliance with the declared purpose?

The European Commission has already demonstrated its determination to make the EU visa policy as friendly as possible. This is why we, members of the Coalition representing more than forty organisations from the EU and wider Europe, would like to ask the European Commission for clarifications with regard to this situation of legal uncertainty. We would also like to cooperate more closely with the European Commission to make sure that the EU visa policy is not a major barrier in contacts between people, business relations, tourist exchange and cultural and scientific cooperation between the EU and its eastern neighbours.

Sincerely yours,

Iryna Sushko



Joanna Fomina

