



EUROPEAN COMMISSION
DIRECTORATE-GENERAL HOME AFFAIRS

Directorate B: Immigration and asylum
Unit B.3: Visa policy

Brussels, 25 AVR. 2012
HOME/B3/DS/AMS

To: Ms Joanna Fomina
and Ms Iryna Sushko

e-mail: jfomina@batory.org.pl

Dear Ms Fomina and Ms Sushko,

Thank you for your note of 30 March 2012 where you reiterate the issue of Member States' issuing of multiple entry visas with a long period of validity and visa holders' use of such visa.

The Visa Code¹, applicable since 5 April 2010, for the first time, establishes conditions on the issuance of multiple-entry visas at EU level. This is a major improvement: before, hardly any multiple-entry visas with a long period of validity were issued; since then, the number has risen importantly. According to Article 24 (2) of the Visa Code the following general conditions have to be fulfilled for a multiple entry visas to be issued: (a) proof of the applicant's need or intention to travel frequently or regularly over the period of validity of the visa and (b) proof of the applicant's integrity and reliability, in particular through the lawful use of previous Schengen visas. This means that multiple-entry visas with a long period of validity are issued to *bona fide* applicants who need to travel frequently over a long period of time.

Further facilitations with regard to the issuance of multiple-entry visas are laid down by Article 5 of the existing EU – Ukraine Visa Facilitation Agreement² for certain categories of Ukrainian citizens. With regard to the period of validity, these rules establish a certain framework: in particular, most categories have a right to a multiple-entry visa with a period of validity of up to one year after they have obtained and lawfully used during the previous year at least one visa. Nevertheless, apart from that, these rules still leave a wide margin of appreciation to the Member States with regard to determining the period of validity of multiple-entry visas (e.g. visa to be issued with a term of validity of "up to" five years or "up to" one year). With a view to reducing that margin of appreciation, the review of these rules was addressed in the framework of the renegotiation of the Visa Facilitation Agreement and such a reduction agreed: the new rules agreed between the negotiators foresee that *bona fide* applicants falling within certain categories of persons will benefit from 5-year or 1-year multiple-entry visas, depending on the category, as of their first application, unless their need or intention to travel frequently or regularly is

¹ OJ L 243, 15.9.2012, page 1.

² Agreement between the European Community and Ukraine on the facilitation of the issuance of visas, OJ L 332, 18.12.2007, page 68.

manifestly limited to a shorter period. Among the categories of persons to benefit from the 1-year multiple-entry visas are persons participating in scientific activities, including university and other exchange programmes, and representatives of civil society organisations. The reviewed provisions will become applicable once the ratification procedures have been completed, possibly before the end of this year.

It lies in the nature of the above mentioned conditions for issuing multiple entry visas that no further "exhaustive and precise explanation" can be given on when such visas are issued. Thus, requirements can differ for different categories of travellers. For example, different supporting documents might be required to prove the need to frequently travel, depending on whether this need is due to family ties or business relations.

However, as can be seen from our recently published annual statistics³, the overall number of multiple entry visas issued is in fact growing (in 2010 34% of all uniform visas issued were multiple-entry visas, and in 2011 this percentage was 38,7). Unfortunately our current legal basis does not provide for collection of data on the duration of validity of such this type of visas.

As regards the differences in the supporting documents to be submitted by visa applicants in Ukraine, please be informed that within the local Schengen cooperation (as coordinated by the EU Delegation in Kiev), work is in progress on drawing up harmonised lists which will eventually be adopted by the Commission in a legally binding implementing Decision.

Furthermore, with regard to the cases of annulment of multiple-entry visas that you mention in your letter, it is true that Schengen visas are not purpose bound: if a person has received a multiple-entry visa with a long period of validity, as a business person whose integrity and reliability were proven and who justified the need to travel frequently for business purposes, he is allowed to use this visa also for a tourist trip to the Schengen area. Authorities of other Member States than the one who issued the multiple-entry visa should accept that this multiple-entry visa is used also for such a tourist trip.

In this context however, it should be recalled that a visa applicant must respect the rules determining the Member State competent for examining and deciding on a visa application (see Article 5 of the Visa Code). According to these rules, a visa applicant does not have a free choice between Member States' consulates, when applying for a visa; he should lodge his application with the consulate of the Member State whose territory constitutes the sole destination of the visit or, if the visit includes more than one destination, the Member State whose territory constitutes the main destination of the visit in terms of the length or purpose of stay.

A visa must be annulled where, in an individual case, it becomes evident that the conditions for issuing the visa were not met at the time when the visa was issued, in particular, if there are serious grounds for believing that the visa was fraudulently obtained (see Article 34 (1) of the Visa Code). If, when lodging his visa application, the applicant, in order to circumvent the rules on the determination of the Member State competent for processing the visa application, makes statements or submits supporting documents which do not match his real travel intentions, it might be considered that there

³ <http://ec.europa.eu/home-affairs/policies/borders/docs/synthese%202011%20with%20filters.xls>

are serious grounds for believing that the visa was fraudulently obtained and would thus have to be annulled.

Finally, let me recall that the holder of a visa should at each entry be in a position to prove that he or she fulfils the entry conditions. In this regard, let me inform you that work on the information sheet explaining the entry conditions to holders of short stay visas, has been finalised and that a sample information sheet has been made available to Member States earlier this year. Given that there is no legal basis in the Visa Code for the use or content of such an information sheet, Member States are not obliged to use it and if they chose to do so they may adapt the content. However, the sample will be added to the Visa Code Handbook as recommended best practice in a future amendment of the Commission implementing Decision establishing the Handbook.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Jan De Ceuster', written over a horizontal line.

Jan De Ceuster

Head of Unit