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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

# RESTREINT UE



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THE EUROPEAN UNION

Brussels, 23 October 2006

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## REPORT

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from : Evaluation Committee

to: Schengen Evaluation Working Party

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Subject : DRAFT report on the Evaluation Committee's mission to the **Embassy - Consular Section of Lithuania in Kiev** in the context of Lithuania's preparation for the full implementation of the Schengen acquis (Time of visit: June 2006)

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Delegations will find attached the draft report of the Schengen Evaluation mission to the Embassy - Consular Section of Lithuania in Kiev, drafted by the Evaluation Committee (Annex II) (hereinafter *EvalCom*). It is presented to the Sch-Eval Working Party for discussion and adoption, allowing for its eventual submission to the Council.

Comments of the Lithuanian authorities are set out in footnotes.

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## Introduction: General context

Ukraine covers an area of 603 700 km<sup>2</sup>. The country has 47 million inhabitants, 78 % of whom are Ukrainian and 17 % Russian, the remaining 5 % being mainly nationals of Belarus and Moldova. The capital, Kiev, has 2,6 million inhabitants. The official language is Ukrainian, but Russian is still widely spoken, especially in the east and south of the country.

Ukraine became independent on 24 August 1991. The 2004 presidential election triggered a strong popular movement (the "Orange Revolution") which brought the democratic opposition leader to power. The March 2006 general election gave the advantage to the supporters of the former Prime Minister but at the time of the evaluation mission a government had not yet been formed.

The country is 70th in the world ranking of developed countries (2004 UNDP Human Development Index). The per capita GDP is USD 970 (the average in the EU was USD 28 500 in 2005). The official rate of unemployment is 4 %, but according to the ILO it is nearer 11-12 %. Since 2000, the Ukrainian economy has registered a steady growth rate of 8 % per year on average.

## The main problems facing the Schengen States'<sup>1</sup> visa services in Kiev are:

– managing migration risk and possible misuse of visas:

There is a substantial risk of illegal immigration to the Schengen States (cf. the monthly CIREFI reports), and the risks of visa misuse are real: given the differences in wage levels, a person can, in a month of illegally working in certain Schengen States, earn as much as in a year in Ukraine. The risk is especially high in the case of workers on building sites and farms and in nursing. The real, concealed reason for travelling to Europe may also be to contract a marriage or obtain medical treatment.

– detecting document fraud:

Document fraud is widespread but seems to be confined to non-secure documents (employer's certificates, various invitations, etc.). Few falsified official documents (international or internal passports, deeds of ownership, etc.) have been detected, and the quality of the forgery of those that have been detected has been very high.

– the internal passport:

Many "Schengen representations" in Kiev consider the Ukrainian internal passport as a key supporting document. This document is issued once in a lifetime (only the photo is regularly changed and the holders' address is constantly updated) and is rarely forged or issued out of convenience. This document is very useful as a supporting document because the international passports issued to the holder are listed in it and thus the frequency of the change of passports can be verified.

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<sup>1</sup> In this context "Schengen States" refers to the States applying the Schengen acquis in full.

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– dealing with invitations of convenience:

False invitations are commonplace but often easy to detect owing to conspicuous errors (spelling errors, incorrect geographic locations, etc.).

However, it is hard for consular services to do anything about invitations of convenience that are formally authentic but conceal the real purpose of the applicant's stay. Additional documents often have to be requested to prove the purpose of the trip (for example, receipts and evidence of customs clearance for products previously purchased may be requested for business trips).

– managing tourist flows:

Most consular representations in Kiev have introduced a procedure for accrediting local travel agencies so that visa applicants wishing to visit a Schengen State as tourists are spared the need to appear in person. To guard against abuses, a system of accrediting the agencies' representatives (who are issued with badges including photos) has also been introduced in most cases. Agencies are penalised for any shortcomings in the handling of applications. Moreover, it does happen that travel agencies submit applications (for a fee) for the sole purpose of sparing the applicant the need to appear in person.

- security situation

Ensuring the security of the premises and of the staff: the risk of pressure on the staff of the visa sections is a matter of concern as it may lead to irregular issuance of visas. This risk is not only hypothetical in Kiev. The physical security of the staff and of the stickers must also be taken into account.

## Conclusion

It appears that the processing of visa applications requires considerable vigilance in both the detection of false documents and the investigation of the applicants' real situation. Decision-making thus requires a systematic and thorough examination of a range of evidence proving the actual purpose of the planned stay. Individual in depth interviews are also necessary whenever there is doubt as to the applicants' intentions.

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## Management summary

EvalCom considers that, on the basis of the checks carried out and the informations gathered, Lithuania, as far as its embassy in Kiev is concerned, may be in a position to implement the Schengen Acquis in full in due course.

Nevertheless, EvalCom wishes to comment on certain points which merit special attention or reviewing by Lithuanian authorities in order for Lithuania to achieve this goal:

### Main concern:

Awareness of the issue of illegal immigration risk and other forms of misuse of visas should be increased as this will become a key issue when Lithuania will start to issue Schengen visas. For this purpose, files must be properly assessed by requesting documents able to prove the aim of the applicant's stay. As a matter of fact, the present and purely formal examination of the files do not match the Schengen standards.

Achieving these goals is going through a reorganisation of the visa decision making process to be able to face properly the work flow arising from the abolishment of the bilateral agreements to be denounced in a near future;

### Other important concerns:

- Collection of the handling fee should take place upon reception of the application;
- The basic rule of personal appearance should be observed;
- Respect of the rules when other members states do not recognize a given travel document (i.e. issuance of LTV visas);
- Upgrading of the visa processing computer system between the embassy and the central authorities (in a view to offer technical safeguards against issuing a visa despite a negative reply from the central authorities or despite a match against the national blacklist);
- Respect of the TMI's provisions especially regarding the fact that the insurance's policy is not required for applicants in transit;
- The Lithuanian 's practice regarding the use of a "refusal stamp" should be abolished;
- Preventing systematically an applicant to ask for a visa after a first refusal should be reconsidered by taking into account the "concrete situation of each applicant".

## **1. ACCESS TO THE CONSULATE**

### **1.1 Location and opening hours**

The embassy of the Republic of Lithuania is located in the southern part of Kiev in a two-storey building recently and partly renovated. The consular section is situated in the ground floor with a separate entrance.

The Embassy can be reached by public transport. It takes 15 minutes on foot to arrive to the embassy from the nearest trolleybus or metro stations.

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Visa applications can be submitted Monday-Thursday, from 10.00-13.00. Return of passports: Monday-Thursday, from 15.00-1600. In particular cases, applications can be submitted upon prior appointment, Wednesday 15.00-17.00 and Friday 10.00-13.00. Travel agencies may submit applications from 9.30 - 10.00, Tuesdays and Thursdays.

## 1.2 Information

There are two telephone lines and an answering machine providing general information on visa requirements, opening hours etc.

EvalCom was informed that the telephone numbers of the consular section are available to the largest information companies and publications of Ukraine and the consular section can be contacted by e-mail. Basic information (opening hours, phone numbers...) is given at the entrance of the embassy's perimeter. All relevant information on visa issuance and the list of necessary supporting documents can be found in the information stand at the entrance to the consular section as well as in the counter/waiting room. Information is available in Ukrainian and English. The web-site of the Embassy of the Republic of Lithuania in Ukraine is currently under construction.

## 1.3 Application forms

Application forms are available in Lithuanian, Ukrainian, Russian and English. Upon request, application forms are sent to the applicants by e-mail or fax. Application forms can also be obtained through Lithuanian communities in Ukraine, at the Ministry of Foreign Affairs' web site, in front of the embassy (handed out by the Ukrainian policeman posted outside) or by the Lithuanian guard at the entrance of the consular section.

An information sheet on how to fill in the application form is also available to applicants in the counter / waiting room.

The content and layout corresponds to the uniform application form set out in Annex 16 of the CCI.

## EvalCom comments and recommendations

**EvalCom noted that the information sheet explaining how to fill in the application form is very helpful for the applicants (with information for instance on the necessity of having a travel document valid three months beyond the end of the intended stay)**

## 1.4 Access management

A shelter at the entrance (street level), seating 10 persons, is installed in order to provide for protection in case of bad weather conditions.

As a rule, applicants must register in advance in order to obtain an appointment, except for travel agencies. Fixing an appointment is possible by calling the embassy (2 phone lines are dedicated to this every day in the afternoon between 2pm and 4pm). A day by day list of appointed persons is handed out to a Lithuanian police officer controlling entrances of applicants into the waiting / counter room of the consular section. This appointment system installed in May 2006 prevents the embassy from queuing applicants in front of the Embassy. This Lithuanian police officer admits max. six applicants at a time. The spacious waiting room/counter room is equipped with wall desks and tables/seats allowing applicants to filling in documents.

Currently, there are no partitions between the three counters to provide privacy. Applicants are free to choose any of the three counters and there is no number system installed.

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EvalCom was informed that renovation works were to be completed before the end of 2006, adding a fourth counter and movable sleigh drawers at each counter partitions between counters (on the "applicants' side").

## **EvalCom comments and recommendation**

**EvalCom recommends that applicants' privacy is ensured after completion of the renovation work <sup>2</sup>.**

## **2. SECURITY FEATURES OF THE BUILDING INCLUDING SECURITY CHECKS**

### **2.1 Outside the building**

Outside the embassy premises there is a 24h Ukrainian police guard. There is a separate entrance to the consular section, controlled by the above mentioned Lithuanian police officer who is responsible for the order and security between the main entrance and the consular section (in and out the counter / waiting room). During office hours the gate is closed by a key, held by a security officer. Security officer opens the gate only for a short period of time, when there is a necessity to let the applicants in, attends the entry of the applicants to a visa section and locks the gate afterwards.

Applicants enter the waiting room through a double door (but not a sluice system) and are directed through a metal detector arch partly out of line with the entrance of the counter / waiting room. If necessary, applicants are also searched by a hand held metal detector. Large bags must be left outside.

EvalCom was informed that a modified entrance preventing applicants from entering without passing through the metal arch is also to be fitted out before the end of the year 2006.

### **2.2 Inside the building**

The waiting room is separated from the visa section by "security" glass. Documents are handed in through a small opening under the glass separation. An intercom system is installed. The door between the visa section and the waiting room is highly secured.

The embassy is supervised by 7 cameras in total (at the outside and inside entrances, in the waiting room). The cameras are monitored by a second Lithuanian police officer. Images are recorded and kept for 1 month. Furthermore, all rooms in the consular section are protected by a movement detector that is connected to an alarm system. The same applies to contact sensors in the windows.

However, the windows are made of simple glass and there are no bars in front of them. EvalCom was informed that after the above mentioned autumn renovation, the windows will be bullet proof and movable sleigh drawers will be fitted out at each counter.

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<sup>2</sup> Comment by Lithuania: In addition to the partitions, the separate interview room, bearing the sound absorbing walls as well as the physical separation between a consular officer and a visa applicant, shall be installed. That way the privacy of the visa applicants interview shall be assured completely.

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Every staff member has an access card, allowing him/her to enter and move freely within the visa section. There are two different levels of access for expatriate staff and their access card is functional 24h/day whereas the access card of locally employed staff is only functional on working days between 9.00-18.00. When leaving the building all staff members leave their cards to one of these two a Lithuanian police officer.

## EvalCom comments and recommendations

**Despite the planned renovation works, protection of windows of the consular section is a matter of concern in the absence of a metal detector arch in line with the entrance of the counter/waiting room. It is therefore recommended that the renovation be accomplished as soon as possible.<sup>3</sup>**

### 3. SUBMISSION OF APPLICATIONS

#### 3.1 Description of the procedure

As a general rule, visa applicants must appear in person. However, exempted from this rule are Ukrainian citizens applying via a travel agency, well known Ukrainian businessmen and Ukrainian VIPs. Persons submitting applications on behalf of the last two categories must present a power of attorney. Persons who are not Ukrainian citizens must appear in person.

An application on behalf of a child can be presented by one of the parents, presenting the birth certificate of the child and a power of attorney from the other parent, or by a representative who is certified by notary and presenting a power of attorney from both parents as well as the birth certificate of the child.

An application can also be presented by another family member, if proof of the family relationship is presented.

#### 3.1.1 Nationality of the applicants

The large majority of visa applicants are Ukrainians. Other nationalities may submit applications, provided they can prove that they are legally residing in Ukraine.

In 2005, visas were issued to nationals of the following countries: Ukraine, Moldova, Russia, Georgia and Belarus.

#### 3.1.2 Issuance of visas to non-residents

According to the national legislation, foreign citizens can apply for a visa in any Lithuanian embassy provided that there is no Lithuanian embassy in his country of origin.

#### 3.1.3 Issuance of visas to holders of travel documents not recognized

Lithuania is using the uniform separate sheet for affixing a visa (Regulation 333/2002) since the 1st July 2003 when the applicant's travel document is not recognised by Lithuania.

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<sup>3</sup> Comment by Lithuania: Although the metal detector arch already was at the entrance of the counter/waiting room during the Schengen evaluation and there was no possibility to enter without being checked, it shall be possible to fit the arch fully in line with the entrance when the renovation is completed.

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## EvalCom comments and recommendations

**When applying in full Schengen acquis, Lithuania should be aware of the rules applying when other Member States do not recognise a given travel document (LTV would have to be issued in these circumstances).**

### **3.1.4 Possibility of future representation under the provisions of CCI, Part II, section 1.2)**

EvalCom was informed that currently Lithuanian national law does not allow Lithuania to be represented by other States for issuing visa and Lithuania cannot represent any other Member State for the purpose of issuing visa. However, it is expected that national legislation will be amended by the end of 2006 in order to allow for such cooperation.

### **3.1.5 Administrative fee**

When applicable, visa fee is to be paid upon application and a receipt is given to the applicant.

Bilateral agreements of the Republic of Lithuania provides for the issuance free of charge of visas to citizens of certain states: Russia (limited number of categories), Ukraine and Moldova.

EvalCom was informed that parliamentary work on the denunciation of these agreements are in progress.

## EvalCom comments and recommendations

**In relation to the collection of the handling fee, the present organisation and work flow cannot be maintained once Lithuania will apply the Schengen acquis in full as larger number of applicants will have to pay this fee.**

### **3.2 Lodging of applications**

Visa applications are usually received by expatriate staff (during holidays, technical staff replace expatriate staff for these tasks). At the counter, a basic interview is always conducted with the applicant. If necessary, in the absence of a separate interview room the applicant is asked to come back later for a “real interview” as there is no time to conduct such a one at the counter in the morning (time schedule of the appointment system need to be respected). However, a separate interview room will be build during the renovation works before the end of the year.

EvalCom was informed that daily about 5 “real interviews” are conducted at the counters (i.e. min. one and max. 10)

A preliminary check of documents is carried out at the counter. If the file is not complete, it is returned to the applicant. In such cases, no record of the application is kept, no fee is collected and no stamp is put into the passport.

If the file is complete, an “application stamp” is put into the passport. This stamp provides space for information on the date of the application, the category of visa applied for, the name and surname of the consular staff member receiving the application. The location where the application has been introduced (“Kiev”) is added afterwards by hand.

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The applicant receives a numbered receipt indicating the initials of the above mentioned consular staff member, the name and the passport number of the applicant, the fee - if applicable -, the date where the passport can be collected (as a rule, five days after application). In case the applicant does not collect the passport himself, it must be mentioned on the receipt who will collect it. Third parties collecting the passport on behalf of the applicant must present a power of attorney. EvalCom was informed that additional documents to be submitted are sometimes also indicated on the receipt.

## EvalCom comments and recommendations

**It is recalled that Schengen provisions concerning the “application stamp” do not allow for any indications on the stamp other than those specified in the rules.**

**Even though there are no Schengen rules requiring an embassy of a Member State to accept an application considered as incomplete, the current practice will become questionable when Lithuania will apply the Schengen acquis in full: to judge an application as incomplete, the file must have been examined to a certain extent, thus meaning that the handling fee should be collected upon reception and not only when the application has been accepted as complete <sup>4</sup>.**

**EvalCom considers as a good and relevant practice to make a link between the applicant and his representative when the latter is collecting the passport by requesting the representative to present a power of attorney.**

### **3.3. Cooperation with travel agencies**

Twenty-two travel agencies are accredited to the embassy. They submit approximately 10% of all applications received. Applications may be submitted exclusively by the official couriers of the agency (max. 2 persons), who are certified during the process of accreditation.

EvalCom was informed that couriers' badges with photo will be compulsory shortly.

Individual travellers may also have their application submitted by a travel agency.

Travel agencies must submit the following information when applying for accreditation:

- filled in application form (drawn up by the Lithuanian authorities)
- proof of registration at the register of legal persons of Ukraine (certified by a notary)
- license to conduct tourist activities (certified by a notary)
- statute of the agency (certified by a notary)
- contracts with Lithuanian tourist service providers (certified by a notary)
- certificate from the tax inspection of Ukraine that state taxes are paid regularly
- example of standard contract between the travel agency and the client (tourist)
- data on the couriers

There is no negative list of travel agencies and no complaints have been received so far.

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<sup>4</sup> Comment by Lithuania: Lithuania informs EvalCom that the legal basis is already being amended, implementing the above-mentioned recommendation.

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## EvalCom comments and recommendations

The organisation of the cooperation with travel agencies seems satisfactory. However, EvalCom noticed that there is no indication on the application form that an application has been submitted via a travel agency and it is impossible to find this information in the database. It would be useful, though, to be able to link easily the holder of an issued visa to a travel agency (without having to look into the file in the archives) in order to detect any potential abuse by the travel agency<sup>5</sup>.

## 4. PROCESSING OF THE APPLICATION

### 4.1. Examination of visa applications

The technical staff inserts manually all the necessary data from the application form into the computerised visa issuance system (Consular Procedures Management System - (hereinafter: CPMS). The photo on the application form is scanned into the system and the application number given by the system is written on the application form afterwards.

Then an expatriate staff member examines the supporting documents and the travel document (authenticity) related to each computerized application. The system offers the possibility to computerize some comments or remarks (using a code) related to an application.

Searching a file in the system is possible through different fields (passport number, application number, name, surname, date of issuance of a visa, nationality...).

No local blacklist is used.

Check against the national black list is only possible through a pc logged in by expatriate staff (identified through their password as such by the system). When the expatriate consults the registered file, the check is carried out automatically. Besides, the system displays the data of the blacklisted persons having similar names and not only when a direct match occurs. If the name of an applicant matches the black list or if his/her application is refused by the central authorities in case of consultation, the application is refused. Nevertheless, it is technically possible to print a visa sticker.

The final decision taken by the expatriate staff is noted on the application form.

In case of doubt about the applicant's intention, a visa will be issued, if it is judged that the applicant does not present a serious risk. In such a case, border control authorities are alerted and asked to pay more attention to that person at the moment of the border crossing.

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<sup>5</sup> Comment by Lithuania: Lithuania informs EvalCom that the name of the travel agency shall be noted in the internal comments section of the computerised Consular Procedures Management System, used for the issuance of visas. This information shall be available using the electronic search functions.

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## EvalCom comments and recommendations

Establishing a local black list would help the Lithuanian consular section to better exploit information provided by other Member States' representations locally and from the possibility of storing such information related to sensitive persons who are not blacklisted at national level.

EvalCom finds the current practice questionable whereby the control of a person is deferred to border control authorities, after the visa has been issued and without a prior serious consideration of the security and immigration risk and risk of misuse the visa. In case of doubt in relation to the documents submitted or the statements made by the applicant, the "diplomatic mission or consular post shall refrain from issuing the visa" (CCI, Part V, third paragraph)<sup>6</sup>.

### 4.2. Consultation of central authorities

Consultation of central authorities is compulsory for nationals of about forty third countries. The request is sent by fax through an open line to the consular department of MFA. The department consults all the relevant instances (i.e. the Migration department of the MoI) and reply to the Embassy within max. 7 days. If need be, in case of doubt (once or twice a month) consultation concerning nationals from third countries other than those included on the list is carried out. It is only possible to consult the national "black list" in relation to a visa application and the list cannot be printed.

## EvalCom comments and recommendations

There is no fully integrated visa processing computer system, which leads to the following situation:

- consultation of central authorities are performed separately and therefore there are no technical safeguards against issuing a visa despite a negative reply from central authorities or despite a match against the national black list;
- useful information provided by central authorities cannot be stored in the embassy's database and will therefore be only accessible by manual consultation of the archives.

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<sup>6</sup> Comment by Lithuania: The Republic of Lithuania would like to completely reject the comment as solid checks of visa applicants are actually carried out before the issuance of visa, fully taking into account the security, immigration and misuse of visa risks. The comment "C-13" (Additional checks are recommended) in a comment section of a visa sticker is inserted only in those rare cases, when there is no grounds for the rejection of a visa, no doubts about the visa applicant, but a consular officer wishes to check if a visa applicant shall have all the appropriate documents also at the border.

For example, if a visa applicant has got the means of subsistence (in case of cash) at the border, which he has declared in the embassy or if he has really insured himself not only for the first time, when travelling with the multiple entry visa and etc. We see that as a good practice and additional control instrument for the border guards.

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EvalCom considers that in terms of security, quality and timesaving, the examination of the applications would benefit from a better integrated visa processing computer system<sup>7</sup>.

EvalCom regrets that the list of third countries for the which a compulsory consultation of the central authority is requested was not communicated to the experts (the list was just shown to one expert), especially considering that members of staff spontaneously gave varying answers as to the number of countries on the list<sup>8</sup>.

## 4.3. Supporting documents

### 4.3.1 The Ukrainian “Internal passport”

As a general rule, the Ukrainian internal passport is issued once in a lifetime (only the photo is regularly changed) and rarely forged or issued out of convenience. This document is considered to be very useful as a “supporting document” because the international passports issued to a Ukrainian citizen are listed in it and thus the frequency of the change of passports can be verified.

### 4.3.2 Proof of means of subsistence/proof of invitation

Bilateral agreements exempt Ukrainian and Moldovan citizens from the obligation to prove any means of subsistence or to submit a proof of invitation (EvalCom was, however, informed that checks are made - not systematically - concerning employment of Ukrainian and Moldovan applicants and more attention is paid to suspicious cases (and additional documentation is required)).

Lithuanian legislation also exempts citizens from Belarus, Ecuador, Kazakhstan, Taiwan, South Africa and Russian Federation from submitting proof of invitation.

Nationals of all other countries (= more or less 15% out of the total amount of applications) must submit proof of invitations:

\* **Natural persons** invited by friends or relatives are required to be in a possession of a standard form providing proof of invitation, sponsorship (for other expenses related to his maintenance or his expulsion from Lithuania) and accommodation. This form must be submitted by the inviting person through the Migration Office in Lithuania. When the applicant brings the original and certified form to the embassy, the identification number appearing on it is entered into the database. This number must match the number given to the invitation in the database in Vilnius (N.B.: the form shown to EvalCom does not correspond exactly to the form notified by Lithuania to the Council General Secretariat. and published in Annex 15 to the CCI).

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<sup>7</sup> Comment by Lithuania: the lack of integration of the consultations into the visa processing system (CPMS) appeared due to the temporary technical problems which shall be completely solved by the project for the implementation of National Schengen Information System / Visa Information System, financed from the means of Schengen facility.

<sup>8</sup> Comment by Lithuania: in the majority of other EU Member – States, the list of ‘risk countries’ (Annex 5 A of CCI) is a restricted document and could not be communicated to the experts freely due to the security reasons as the request for the list appeared spontaneously. The list could have been officially transferred to the experts if requested in written in advance and only after the formal procedures of security (checks of clearances to work with restricted information and etc.). The number of the countries on a list is dynamic – that is why all the staff (especially local) may not know the exact number of its entries.

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\* **Legal inviting persons** must send a letter of invitation (not a standard form but certified by a stamp of the inviting firm) to the Migration Office in Vilnius who will stamp the invitation as well. This letter of invitation must provide for the same guarantees as for natural persons above. However, EvalCom could not establish the exact nature of the control carried out by the Migration Office. The applicant must bring the original of this letter whereas a copy is sent by the Migration Office to the embassy.

EvalCom was informed that expatriate staff regularly makes checks by calling the hotel where the applicant will stay and/or the inviting person (legal or natural) mentioned on the application form.

Neither of these two models of invitation are controlled at the border.

Verification of a number of archived files showed that only in rare cases (lorry drivers and applications submitted by travel agencies), applications contained other supporting documents than the proof of travel medical insurance.

## EvalCom comments and recommendations

**Contrary to the information given to EvalCom concerning check of the employment of Ukrainian applicants, no documents proving their professional situation have been found in the archived files, meaning that little attention seems to be paid to check of the evidence of the applicant's actual intention to return<sup>9</sup>.**

**As a consequence, and notwithstanding the fact that for the time being most of the applications are submitted by Ukrainians citizens, EvalCom considers as a matter of concern the general lack of supporting documents (except for applications submitted by lorry drivers and travel agencies) kept in almost all the files examined (irrespective of the applicant's nationality), thus providing no evidence that security and immigration risk or other types of potential misuse of the visa had been carried out<sup>10</sup>.**

### 4.3.3 Travel Medical Insurance (TMI)

The consular section does not cooperate with a specific number of insurance companies.

The nature of the coverage is similar to the Schengen requirements (cf Decision 2004/17/EC). The required coverage for "C" visas is 30 000 EUR and for "B" visas 6 000 EUR.

The inviting person may take out the insurance in Lithuania.

Proof of TMI was present in almost all the files checked by EvalCom.

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<sup>9</sup> Comment by Lithuania: The clear majority of visas are issued to the citizens of Ukraine and Moldova (98,22%), for which there is no requirement to present the invitation and other supporting documents while issuing a visa at the moment. Additionally, Russian, Belarus and Kazakh citizen could have received visas without invitation too (see footnote above). Statistically the probability for EvalCom to find an invitation was a bit more than 1 from 100 in every archive folder containing 100 applications. That was the reason why archive files contain few supporting documents and that is why we would ask not to make too general conclusions on their lack.

<sup>10</sup> See the footnote above.

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Applicants travelling as a group must present their insurance policies upon submission by the travel agency. Individual applicants having recourse to travel agencies must submit the entire contract (with the provisions in details) .

In case of multiple entry visa, the applicant is not asked to sign a statement saying that he is aware that he will have to be covered for each stay.

## EvalCom comments and recommendations

**It is recalled that TMI provisions (Decision 2004/17/ EC) will have to be observed when Lithuania will apply the Schengen acquis in full and attention is drawn to the fact that TMI is not required for transit visas <sup>11</sup>.**

## 5. TYPES OF VISA ISSUED

The following types of visas may be issued: Airport transit visa, transit visa, short-stay. In 2005, "B" visa represented 20% of the visas issued and "C" represented 80%.

Short stay visas are issued only for single-entry except for family members of EU citizens to whom multiple entry visa are mostly issued. Other categories of persons could be issued multiple entry visa (one 1 year- 5 years (in exceptional cases)) upon presentation of additional documents (According to national legislation on the "Legal Status of the Aliens of 29.4.2004 (Art. 15) "C" visas with double entry cannot be issued).

Group visas can be issued. In 2006, so far, no group visas have been issued and in 2005 there were 10 cases (sportsmen, seniors, etc.)

## EvalCom comments and recommendations

**There should be no unnecessary restrictions for issuing multiple entry visas to any applicant, provided that sufficient proof of the necessity of multiple stays is presented <sup>12</sup>.**

**The national law should be amended in order to provide for the possibility of issuing double entry visas. <sup>13</sup>**

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<sup>11</sup> Comment by Lithuania: Council Decision 2004/17/EC of 22 December 2003 amending Part V, point 1.4, of the Common Consular Instructions and Part I, point 4.1.2 of the Common Manual as regards inclusion of the requirement to be in possession of travel medical insurance as one of the supporting documents for the grant of a uniform entry visa regulates the issuance of 'short-term or travel visas' (See Article 1). In our opinion, that is the description of C category (short-term) visas, not covering B category (transit) visas. That is why we are requiring travel insurance from transit visa applicants according to national acts of law.

<sup>12</sup> Comment by Lithuania: the necessary changes shall be implemented in the near future.

<sup>13</sup> Comment by Lithuania: the necessary legislative amendments are under way.

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## 6. REFUSAL

### 6.1 Notification of refusal

If a visa is refused, a stamp indicating 'visa not issued' ("viza neišduota") is affixed to the travel document. There is no date on this stamp. However, the date of refusal is entered into the database (CPMS) and within one year from this date the applicant can not apply anymore for a visa.

The applicant is informed orally about the refusal, when picking up the travel document. The information given refers to the relevant provision of Lithuanian legislation, on which the decision to refuse has been taken. Upon request, the same information can be given in writing.

As for refused applicants who are family members of EU Citizens, EvalCom was informed that it may be considered to disclose the grounds for refusal.

Negative decisions can be appealed within 7 days after the decision, to the Administrative Court of the corresponding district of the Republic of Lithuania.

Since the beginning of 2006 till the day of EvalCom's visit, 90 applicants had been refused (of which 33 were Moldovan and 1 Russian).

Information concerning the ground(s) of rejection is indicated on the application form (but only the mention "insufficient supporting document" - without indicating precisely which document/information was missing).

#### EvalCom comments and recommendations

**EvalCom recalls that the CCI does not contain any provisions on "refusal stamps" and therefore this practice should be abolished. Attention is also drawn to the legal uncertainty created by the fact that no date of refusal is indicated on the "refusal stamp", making it virtually impossible for the applicant to know exactly when the deadline to appeal the decision starts.**

**Besides, the short deadline (7 days) also makes it very difficult for a refused applicant to appeal the decision <sup>14</sup>.**

**EvalCom considers it seriously questionable that an applicant is prevented from submitting a new application after a refusal as the grounds for the initial refusal may no longer be valid and reference is made to Part V, section 2.2, second paragraph according to which national authorities are invited to take into account the "concrete situation of each applicant" <sup>15</sup>.**

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<sup>14</sup> Comment by Lithuania: the "refusal stamp" will be abolished in the nearest future.

<sup>15</sup> Comment by Lithuania: the practice of preventing a visa applicant from submitting a new application after a refusal for 1 year will be abolished in the nearest future.

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## EvalCom note

EvalCom recalls the procedural safeguards enjoyed by family members of EU (Directive 2004/38<sup>16</sup>), meaning that refusals must be notified to them in written form, detailed motivation must be given and a right of appeal is offered to this category of persons<sup>17</sup>.

## 6.2 Rejection rates

Rejection rates: 2005: 1,17% and 2006 (January - May): 1,14%.

## EvalCom comments and recommendations

Compared to the average of all the “old” and even most of the “new” Member States, this rate is very low. The purely formal nature processing of visa applications (see “comments and recommendations” in previous chapters) explains these figures<sup>18</sup>.

This very low rejection rate is as a matter of concern in the perspective of a future application in full of the Schengen rules by Lithuania.

Awareness of the issue of illegal immigration risk and other forms of misusing the visas should be increased as this will become a fundamental concern for all the others members states when Lithuania will start to issue Schengen visas.

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<sup>16</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29.4.2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158, 30.4.2004:

<sup>17</sup> Comment by Lithuania: appreciates the proposal of EvalCom and agrees to inform all the EU/EEE citizens’ family member in written form on the grounds for the refusal of a visa- the legal provisions shall be implemented in the near future.

<sup>18</sup> The Republic of Lithuania cannot agree with the assessment of ‘purely formal nature processing of visa applications’. The Republic of Lithuania has notified the EU Council that one of the bilateral agreements of The Republic of Lithuania, which are not fully in line with the Community legislation is the Agreement between the Government of the Republic of Lithuania and the Chamber of Ministers of Ukraine on the travels of the citizens (Official gazette, 2004, Nr. 92-3351). According to Article 9 of the above mentioned Agreement, the visas are issued to the citizens of Ukraine free of charge and not requiring an invitation. The absence of formal requirement to present the invitation substantially reduces the number of the grounds to reject a visa application, that is why the rejection rate is lower. Situation is the same for the citizens of Moldova.

There is no consular fee to cover the expenses for the issuance of visa to the citizens of Ukraine, that is why consular officers in Kiev not always accept the visa application if there is a clear lack of documents or the passport is just not valid in the stage of ‘pre-checking’. Such instances are quite often but they do not count against the official rejection rate of visas. Nevertheless, Lithuania appreciates the comment and shall implement the necessary amendments from the date of accession into Schengen.

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**This means also that the present organisation and work flow cannot be maintained when a large number of applications would have to be assessed more thoroughly after denunciation of all the bilateral agreements <sup>19</sup>.**

## 7. THE VISA STICKER

### 7.1 Printing, affixing and machine readable zone

Stickers are printed, affixed and stamped by technical staff (N.b.: several stickers can be printed in the same time). Visas are printed with the photo of the applicant since 1.9.2005). The format and contents of information contained in the machine readable zone are in compliance with the international standards (ICAO).

The list of possible mentions to be added in the “remark zone” of the sticker is closed. Further control can be carried by border control authorities if the mention printed on the sticker is dedicated to this control (only a code corresponding to the mention appears).

In the observed cases visa stickers were not placed correctly against the edge of the page of the passports, rendering machine reading of the sticker difficult.

A stamp of the issuing authority is in use and affixed correctly.

The visa stickers are not signed. Nevertheless, issuing officer’s surname and the first letter of his name, together with the code number of the diplomatic post of the Republic of Lithuania is printed on the visa sticker.

When an applicant is exempted from the requirement to be in possession of a travel medical insurance, EvalCom has been told that the wording “*insurance not required*” is printed in the “remark zone” of the sticker.

One of the two "control stickers" containing the number of the visa sticker is attached to the application form for archiving purposes and the other one is shredded.

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<sup>19</sup> Embassy of the Republic of Lithuania in Kiev shall receive additional diplomatic and consular officers for the implementation of consular functions, according to the ‘Program of Consular Development’ in 2007, which is already confirmed by the Government of Lithuania. The even more in-depth processing of visa applications shall also be facilitated by the introduction of the advance booking system for the visa appointments (it started working only in May 2006).

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## EvalCom comments and recommendations

It is recalled that national mentions (differing from the mandatory mentions) should be notified in due course to the SG in order to be published in Annex 9 to the CCI<sup>20</sup>.

It is recalled that the sticker must be affixed in such a manner (close to the edge of the page of the passport) the MRZ of the sticker can be machine read<sup>21</sup>.

### **7.2 Destruction of visa stickers**

Invalidated visas (not yet affixed) are stamped (red cross) but not the sticker, nor the kinegramme are destroyed (650 visa stickers have been invalidated since 01/05/04).

Invalidated visa stickers are kept in a folder in a safe in the Consul's office for one year and then kept in the archives for four years. After this period, they are sent by diplomatic post to Vilnius.

If the technical mistake is noted only when the sticker has been affixed in the passport, it is marked with the stamp (red cross). A copy of the page of passport with the invalidated sticker is put into abovementioned folder.

## Comments and recommendations

**There is no relevant reason for keeping invalidated stickers during one year in the office of the consul and four additional years after in the archives, especially considering on the one hand the fact that neither the sticker nor the kinegramme are destroyed and on the other hand the fact that the number of invalidated stickers is not insignificant<sup>22</sup>.**

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<sup>20</sup> Comment by Lithuania: appreciates the comment and shall notify the Secretariat General on the national remarks in the nearest future.

<sup>21</sup> Comment by Lithuania: would like to confirm that as a general rule the visa stickers are being placed correctly against the edge of the page of the passports. The observed cases must have been the mere exceptions from the rule, due to the mistake of the officer affixing the sticker. Nevertheless, Embassy in Kiev was warned on the problem and shall affix all the stickers correctly in the future. We would also like to note that MRZ readers of the borderguards of the Republic of Lithuania enable the processing of all the visa stickers issued by Lithuania without any problems.

<sup>22</sup> Comment by Lithuania: Lithuania appreciates the comment, but would like to inform EvalCom that the necessity to store the invalidated stickers is due to the national legal basis of Lithuania. Visa stickers have a status of strict accountancy documents, that is why there is a sophisticated procedure for the processing, writing off and the processing of invalidated stickers. Nevertheless, Kinegrams of the invalidated visa stickers shall be destroyed (scratched).

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## 8. STAFF

### 8.1 Division of tasks between expatriate staff and local staff

In the consular section work two expatriate diplomats with Lithuanian nationality, carrying out consular functions, as well as three locally employed staff of Lithuanian, Lithuanian/Ukrainian and Ukrainian (Lithuanian origin) citizenship.

### 8.2 Checks upon recruitment and further evaluation

EvalCom was informed that expatriate and locally employed staff are checked before taking up their functions by the Security Division of the MFA as well as the National Security Department of Lithuania. Local staff is recruited mainly from the Lithuanian community in Kiev. Before taking up their function, locally employed staff receives one week technical training. After that, they do general tasks for one month and start working only afterwards in the visa section. At the end of the year, all Lithuanian embassies are evaluated (implementation of consular functions included). According to these evaluations, structural and staff changes are faced.

### 8.3. Training

EvalCom was informed that expatriate staff and locally employed technical staff must attend a special training (3-4 weeks) given by qualified officers from the MFA Consular Department (in Vilnius). Among others subjects, EU legal basis and national legal basis in the sphere of consular affairs are taught. Participants receive also practical training to solve various consular problems and familiarize themselves with the CPMS. After the training they have to go up for theoretical and practical tests.

Once or twice a year the MFA organises “Consular conventions” focusing on a follow-up of the training, possible changes of legislation on consular affairs, exchanging of practical experience. Two or three times a year regional training sessions are organised. These trainings take place where a majority of Lithuanian embassies is concentrated. Local staff is trained by expatriate staff.

### 8.4 (Potential for) misuse of professional position

EvalCom was informed that local staff of the embassy are employed on one year contracts, which can be prolonged, according to the achievement of each person concerned. In case there are suspicion of any unauthorised contacts or other misuse, the contract is terminated.

### 8.5 Protection of staff

EvalCom was informed that apart from the Ukrainian police man outside and the two Lithuanian security guards working in the embassy, the Security Division of the Ministry of Foreign Affairs of the Republic of Lithuania is responsible for the protection of the staff of an embassy. Security Division can always be contacted and, in case of a need, organizes work trips to the embassies.

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## 9. SENSITIVE DOCUMENTS

(incl. transport, storage, access (keys), monitoring of stock)

### 9.1. Transport

Visa stickers are sent by diplomatic pouch along with an “issue-acceptance certificate”. They are registered in a book as well as in the CPMS.

### 9.2 Storage

Blank visa stickers are stored in a separate safe (in the Consul's office) with a combination lock and a key. The keys are kept by the consul and by the vice-consul in her absence. Only these two persons know the combination which is changed every month.

In the beginning of every working day, an expatriate staff hands out 300 visa stickers to each of the technical local staff who must sign for them. The numbers of the stickers are registered in the CPMS as well as in a "log book". During the day the stock is kept by the staff in a common safe in the technical staff's office and every evening the stock is put back into the central safe.

At the time of EvalCom's visit, 7000 stickers were kept in the safe. Monitoring of stock can always be done by the CPMS. The stock is also monitored by the Internal Audit Division of the MFA.

## 10. IT

### 10.1 Entry / access

The access into the CPMS is possible by using a login and a password. The two different levels of access (“input” data level and “decision” level) are set by the MFA in Vilnius for each member of the staff. The system requires the passwords to be changed once a month. The consular officers of the Embassy have access only to the local database of visas issued in their Embassy (only Ministry of Foreign Affairs in Vilnius can browse visas issued in Lithuanian embassies all around the world).

The national blacklist is updated online. New versions of the CPMS can be installed either from CD-ROM or by using the direct encrypted connection from Vilnius (Information Technologies Department of the Ministry of Foreign Affairs of the Republic of Lithuania).

All the information on the issued visas in the embassies of the Republic of Lithuania is sent and backed-up on-line in the central data-base of the ministry of Foreign Affairs of the Republic of Lithuania in Vilnius. There is a 24h hot-line connection with the IT Department of MFA for solving technical problems and other emergency situations.

### 10.2 Encryption

The data is sent from the local Database in Kiev to the central visa Database in Vilnius using an encrypted tunnel.

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## 10.3 Data protection

The screen is blanked after 3 minutes of inactivity. A password is required to re-access.

It is only possible to consult the national "black list" in relation to a submitted visa application and the list cannot be printed.

### EvalCom comments and recommendations

**EvalCom appreciates the security measures taken to prevent a free access to, consultation and printing of a name from the black list.**

## 11. EQUIPMENT FOR DETECTING FALSE DOCUMENTS

Sophisticated kits for the detection of false documents (UV-lamps, magnifiers, retro-viewers, scalpels and etc.) are available in the consul's office. The equipment is not used on a routine basis. One common UV lamp at the counter was not used during the evaluation visit.

No electronic "KEESING") handbook on travel documents containing specimens of passports issued by all recognized states in the world is available.

## 12. FILING / ARCHIVING

Visa applications and copies of supporting documents are stored in secure archive amenities (a locked room with smoke detectors) for one year in case of positive decision, and 5 years, in case of negative decision. They are stored in boxes (visas issued and refused are separated) and classified by the number of the sticker.

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## 13. GENERAL CONCLUSION AND RECOMMENDATIONS

EvalCom considers that, on the basis of the checks carried out and the information gathered, Lithuania, as far as its embassy in Kiev is concerned, may be in a position to implement the Schengen acquis in full in due course.

Nevertheless, EvalCom wishes to comment on certain points which merit special attention or reviewing by the Lithuanian authorities in order for Lithuania to achieve this goal.

### 1. Organisational aspects

EvalCom underlines the necessity:

a) to upgrade properly the present organisation and work flow (despite the relevant renovation works under way) to make them match the Schengen standards with regard to submission and examination of the files;

b) to assess the applications in line with the Schengen rules (proof of means of subsistence, proof of invitation, verification of the professional situation of the applicant are missing most of the time). To face this concern, attention would probably have to be paid also in upgrading human resources of the consular section to allow the embassy to stay in a position to issue the visas in a reasonable time;

c) to collect the handling fee upon reception of the application and not only when the application has been accepted as complete;

### 2. Practices related to the submission and processing of visa applications

Compared to the average of all Member States, the refusal rates is very low. In particular with regard to the fact that the processing of visa applications seems to be purely formal, this very low rejection rate is a matter of concern. Awareness of the issue of illegal immigration risk and other forms of misuse of visas should be increased as this will become a key issue when Lithuania will start to issue Schengen visas.

EvalCom recalls the importance of the basic rule of personal appearance (set out in the CCI, Part III, section 4 and Part V, 3rd paragraph) and recommends caution when exemptions from this rule are introduced.

When applying Schengen acquis in full, Lithuania should be aware of the rules applying when other members states do not recognize a given travel document (i.e. issuance of LTV visas;

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Deferring the responsibility to deny the access to the Lithuanian territory to the border control authorities when any kind of doubt occurs in the file should be refrained and the visa refused by the embassy ;

In terms of security, quality and timesaving, the examination of the files could be significantly improved.

A better integrated visa processing computer system between the embassy and his central authorities should be set up:

- to offer technical safeguards against issuing a visa despite a negative reply from the central authorities or despite a match against the national blacklist
- to store in the computer system useful background information sent back by central authorities into the electronic files;

The TMI will have to be in conformity with the CCI provisions (in particular the fact that the insurance's policy is not required for applicants in transit (B-type of visa))

Provided that the need for multiples entries is clearly established, no unnecessary restrictions for issuing multiple entry visas to any applicant should apply;

EvalCom recalls that the CCI does not contain any provisions on 'refusal stamps' and therefore this practice should be abolished;

EvalCom recalls the necessity to take into account the "concrete situation of each applicant " (cf. CCI) instead of preventing him to ask for a visa after a first refusal;

### 3. Bilateral agreements

EvalCom recalls that bilateral agreements including waiver of the handling fee (not covered by EU agreements) and other ones exempting Ukrainian and Moldovan citizens from the obligation to prove any means of subsistence or to submit a proof of invitation must be denounced in due time before application of the Schengen acquis in full.

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EvalCom emphasizes that the above mentioned comments and recommendations under 1 and 2, which are based on the situation as assessed in Kiev, can be relevant for other locations. The Lithuanian Ministry of Foreign Affairs should ensure an appropriate follow up.

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ANNEX I

VISAS ISSUED BY THE EMBASSY OF THE REPUBLIC OF LITHUANIA IN KIEV									
IN 2005									
	Visas A	Visas B	Visas C	Total Visas A+B+C	Visas D	Total Visas A+B+C+D	Visas Not Issued	Rejection Rate	Rejection Rate in %
January	0	204	1167	1371	15	1386	5	0,004	0,36
February	0	170	1115	1285	52	1337	16	0,012	1,2
March	0	221	1318	1539	77	1616	7	0,004	0,43
April	0	219	1380	1599	15	1614	8	0,005	0,5
May	0	343	1229	1572	23	1595	20	0,013	1,25
June	0	640	2080	2720	32	2752	24	0,009	0,87
July	0	575	1992	2567	34	2601	31	0,012	1,19
August	0	359	1660	2019	54	2073	64	0,031	3,09
September	0	303	1634	1937	22	1959	19	0,01	0,97
October	0	281	1334	1615	72	1687	29	0,017	1,72
November	0	304	1526	1830	33	1866	19	0,01	1,02
December	0	388	1381	1769	10	1779	26	0,015	1,46
<b>Total</b>	<b>0</b>	<b>4007</b>	<b>17 816</b>	<b>21 823</b>	<b>439</b>	<b>22 265</b>	<b>268</b>	<b>0,012</b> (average)	<b>1,17</b> (average)

VISAS ISSUED BY THE REPUBLIC OF LITHUANIA IN KIEV									
IN 2006									
	Visas A	Visas B	Visas C	Total Visas A+B+C	Visas D	Total Visas A+B+C+D	Visas Not Issued	Rejection Rate	Rejection Rate in %
January	0	224	981	1205	8	1213	30	0,025	2,47
February	0	185	1233	1418	25	1443	23	0,016	1,59
March	0	248	1203	1451	123	1574	13	0,008	0,83
April	0	303	1935	2238	44	2282	9	0,004	0,39
May	0	409	1873	2282	18	2300	10	0,004	0,43
June	0	516	1839	2355	49	2404	16	0,007	0,66
<b>Total</b>	<b>0</b>	<b>1885</b>	<b>9064</b>	<b>10949</b>	<b>267</b>	<b>11216</b>	<b>101</b>	<b>0,011</b> (average)	<b>1,1</b> (average)

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