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Subject: Replies from Belgium to the questionnaire put forward to the Benelux countries with a view to the evaluation of the application of the Schengen acquis
- Answer to additional questions put forward by France

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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ADDENDUM TO THE NOTE

from : the Belgian delegation
to : the Working Party on Schengen Evaluation
Subject : Replies from Belgium to the questionnaire put forward to the Benelux countries
with a view to the evaluation of the application of the Schengen acquis
- Answer to additional questions put forward by France

1. *Question by France - Police co-operation (SCH-EVAL 21 ADD 2)*

"Where police authorities request the forwarding of a copy of a report which can be used as evidence in judicial proceedings, may they use the procedure laid down in Article 39(2) of the Schengen Convention or should the request be submitted by means of letters rogatory referring to the European Convention on Mutual Assistance?"

Answer

The transfer of written information to be used as evidence of a criminal offence in a criminal procedure, is possible with the consent of the competent judicial authorities. The procedure of art. 39 § 2 however, is only possible when the request is introduced by a judicial authority with consent of the competent judicial authority of the requested party.

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Belgium has several bilateral conventions with third (non-Schengen) countries in which is stipulated that written information may only be used as evidence for the indictment, subject to a request for legal assistance in conformity with the international regulations.

2. *Question by France - Visa and consular co-operation*

" What is the legal base for the use of the database at the Belgian Embassy in Kinshasa on fraud and fraud perpetrators?".

Answer

The above mentioned database is created by the Belgian authorities at the Belgian Embassy in the Democratic Republic of Congo. The database is created and functioning according the 1992 Act on the protection of private life and the processing of personal data, recently modified by the 1998 Act adapting the act to the European directive 95/46/EU and on bases of the Common Visa Instruction - Chapter 7 - Consular Co-operation.

The transfer of personal data to the other Schengen-embassies and Switzerland is possible, according national law and according the European Convention 108 - Protection of individuals with regard to the automatic processing of Personal Data. All Schengen countries and Switzerland are Party with this Convention.

The transfer to other embassies - Japan, Canada and the United States - is possible under the 1992 Act, article 21; transfer to countries which present sufficient level of protection in their national legislation and in mutual respect of national legislation.

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Finally, the most interesting point is part 44 of the Common Visa document (Doc 15320/2/01 REV 2 - VISA 154 Comix 792) which says:

" (...) I am aware of and consent to the following: any personal data concerning me which appear on this visa application form will be supplied to the relevant authorities in the Schengen states and processed by those authorities, if necessary, for the purposes of a decision on my visa application. Such data may be input into, and stored in, databases accessible to the relevant authorities in the various Schengen states.

At my express request, the consular authority processing my application may inform me of the manner in which I may exercise, via the central authority of the state which input the data, my right to check the personal data concerning me and have them altered or deleted, in particular, should they be inaccurate, in accordance with the national law of the state concerned.

I declare that to the best of my knowledge all particulars supplied by me are correct and complete. I am aware that any false statements will lead to my application being rejected or to the annulment of a visa already granted and may also render me liable to prosecution under the law of the Schengen state which deals with the application.

I undertake to leave the territory of the Schengen states upon the expiry of the visa, if granted.

I have been informed that possession of a visa is only one of the prerequisites for entry into the European territory of the Schengen states. The mere fact that a visa has been granted to me does not mean that I will be entitled to compensation if I fail to comply with the relevant provisions of Article 5.1 of the Schengen Implementing Convention and am thus refused entry. The prerequisites for entry will be checked again on entry into the European territory of the Schengen states".
