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PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 30 October 2014

To: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

No. Cion doc.: COM(2014) 679 final ANNEX 1

Subject: ANNEX to the COUNCIL DECISION determining the Union position for a
Decision of the Joint Committee set up under the Agreement between the
European Union and Ukraine on the facilitation of the issuance of visas,
with regard to the adoption of Common Guidelines for the implementation
of the Agreement

Delegations will find attached document COM(2014) 679 final ANNEX 1.

Encl.: COM(2014) 679 final ANNEX 1



EUROPEAN
COMMISSION

Brussels, 30.10.2014
COM(2014) 679 final

ANNEX 1

ANNEX

to the

COUNCIL DECISION

determining the Union position for a Decision of the Joint Committee set up under the Agreement between the European Union and Ukraine on the facilitation of the issuance of visas, with regard to the adoption of Common Guidelines for the implementation of the Agreement

ANNEX

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DRAFT

DECISION N°/2014 OF THE JOINT COMMITTEE

**SET UP BY
THE AGREEMENT BETWEEN THE EUROPEAN UNION AND
UKRAINE ON THE FACILITATION OF ISSUANCE OF VISAS**

of2014

with regard to the adoption of common guidelines on its implementation

(.../.../...)

THE COMMITTEE,

Having regard to the Agreement between the European Union and Ukraine on the facilitation of the issuance of visas (hereinafter referred to as “the Agreement”), and in particular Article 12 thereof,

Whereas that Agreement entered into force on 1 January 2008,

HAS DECIDED THE FOLLOWING:

Article 1

The common guidelines on the implementation of the Agreement between the European Union and Ukraine on the facilitation of the issuance of visas are established in the annex to this Decision.

Article 2

Decision No 1/2009 of the Joint Committee is repealed.

ANNEX

COMMON GUIDELINES FOR THE IMPLEMENTATION OF THE AGREEMENT BETWEEN THE EUROPEAN UNION AND UKRAINE ON THE FACILITATION OF THE ISSUANCE OF VISAS

The purpose of the Agreement between the European Union and Ukraine on the facilitation of the issuance of visas, which entered into force on 1 January 2008, as amended by the Agreement between the European Union and Ukraine of 23.07.2012., which entered into force on 1.07.2013 (in the following ‘the Agreement’), is to facilitate, on the basis of reciprocity, the procedures for issuing visas for an intended stay of no more than 90 days per period of 180 days to the citizens of Ukraine.

The Agreement establishes, on the basis of reciprocity, legally binding rights and obligations for the purpose of simplifying the visa issuing procedures for Ukrainian citizens.

These Guidelines, adopted by the Joint Committee established by the Agreement, aim at ensuring a correct and harmonised implementation of the provisions of the Agreement by the diplomatic missions and consular posts of the Member States. These Guidelines are not part of the Agreement and therefore they are not legally binding. However, it is highly recommended that diplomatic and consular staff consistently follow them when implementing the provisions of the Agreement.

The Guidelines are conceived as a living document, to be updated in light of the experiences of the implementation of the Agreement under the responsibility of the Joint Committee set up by Article 12 of the Agreement. The Guidelines, adopted by the Joint Committee on 25 November 2009 have been adapted in line with the Agreement between the European Union and Ukraine amending the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas, and with new EU legislation such as the Visa Code.

I. GENERAL ISSUES.

1.1. Purpose and scope of application.

Article 1 of the Agreement stipulates that: "The purpose of this Agreement is to facilitate the issuance of visas for an intended stay of no more than 90 days per period of 180 days to the citizens of Ukraine."

The Agreement applies to all Ukrainian citizens who apply for a short-stay visa, whatever the country in which they reside.

Article 1(2) of the Agreement stipulates that: "Ukraine may only reintroduce the visa requirement for citizens or certain categories of citizens of all Member States and not for citizens or certain categories of citizens of individual Member States. If Ukraine would reintroduce the visa requirement for EU citizens or certain categories of EU citizens, the same facilitations granted under this agreement to the Ukrainian citizens would automatically, on the basis of reciprocity, apply to EU citizens concerned."

According to the decisions taken by the Ukrainian government, as from 1 May 2005 or 1 January 2008 respectively, EU citizens are exempted from the visa requirement when travelling to Ukraine for a period of time not exceeding 90 days or transiting through the territory of Ukraine. This provision does not affect the right of the Ukrainian government to amend these decisions.

1.2. Scope of the Agreement.

Article 2 of the Agreement stipulates that:

"1. The visa facilitations provided in this Agreement shall apply to citizens of Ukraine only insofar as they are not exempted from the visa requirement by the laws and regulations of the European Union or the Member States, the present agreement or other international agreements.

2. The national law of Ukraine, or of the Member States or European Union law shall apply to issues not covered by the provisions of this Agreement, such as the refusal to issue a visa, recognition of travel documents, proof of sufficient means of subsistence and the refusal of entry and expulsion measures."

Without prejudice to Article 10 (which provides for the exemption from the visa requirement for holders of diplomatic passports and biometric service passports of Ukraine), the Agreement does not affect the existing rules on visa obligations and visa exemptions. For instance, Article 4 of Council Regulation N°539/2001 allows Member States to exempt from the visa requirement civilian air and sea crews among other categories.

Schengen rules and, where appropriate, national law continue to apply to all issues not covered by the Agreement such as the refusal to issue a visa, recognition of travel documents, proof of sufficient means of subsistence, the refusal of entry, and expulsion measures. This also applies to the Schengen rules determining the Schengen Member State responsible for processing a visa application. Therefore, a Ukrainian citizen should continue to apply for a visa to the consulate of the Member State of the main destination of his/her travelling; if there is no main destination, (s)he should apply to the consulate of the Member State of first entry into the Schengen area.

Even if the conditions foreseen in the Agreement are met, for example, proof of documentary evidence regarding the purpose of the journey for the categories foreseen in Article 4 is provided by the visa applicant, the issuance of the visa still can be refused if the conditions laid down in Article 5 of the Schengen Borders Code are not fulfilled, i.e. the person is not in

possession of a valid travel document, an alert in the SIS has been issued, the person is considered a threat for public policy, internal security, etc.

Other possibilities for flexibility in the issuing of visas allowed in the Visa Code for issuing visas continue to apply. For instance, multiple-entry visas for a long period of validity- up to five years- can be issued to categories of persons other than those mentioned in Article 5, if the conditions foreseen in the Visa Code are met (cfr. Article 24 (2) of the Visa Code). In the same way, the provisions contained in the Visa Code allowing waiver or reduction of the visa fee will continue to apply (cfr. infra II.2.1.1.).

1.3. Types of visas falling within the scope of the Agreement.

Article 3 (d) of the Agreement defines "visa" as "an authorisation issued by a Member State or a decision taken by such State which is required with a view to:

- entry for an intended stay in that Member State or in several Member States of no more than 90 days in total,
- entry for transit through the territory of that Member State or several Member States,"

The following types of visas are covered by the Agreement:

- "C" visas (short-stay visas).

The facilitations provided by the Agreement apply both to uniform visas valid for the entire territory of the Member States and to visas with limited territorial validity (LTV).

1.4. Calculation of the length of stay authorised by a visa and in particular the question on how to determine the six month period

The recent modification of the Schengen Borders Code has re-defined the notion of short stay. The current definition reads as follows: "90 days in any 180 day-period, which entails considering the 180-day period preceding each day of stay".

The day of entry shall be calculated as the first day of stay in the territory of the Member States and the day of exit shall be calculated as the last day of stay in the territory of the Member States. The notion of "any" implies the application of a "moving" 180-day reference period, looking at each day of the stay back to the last 180 days period, in order to verify if the 90/180 day requirement continues to be fulfilled. This means that an absence for an uninterrupted period of 90 days allows for a new stay of up to 90 days.

The definition entered into force on 18 October 2013. The calculator may be found on-line at the following address: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/border-crossing/index_en.htm

Example of calculation of stay on the basis of the new definition:

A person holding a multiple entry visa for 1 year (18.4.2014 – 18.4.2015) enters for the first time on 19.4.2014 and stays for 3 days. Then he enters again on 18.6.2014 and stays for 86 days. What is the situation on specific dates? When will this person be allowed to enter again?

On 11.9.2014: Over the last 180 days (16.3.2014 – 11.9.2014) the person had stayed for 3 days (19. – 21.4.2014) plus 86 days (18.6.2014 – 11.9.2014) = 89 days = No overstay. The person may still stay for up to 1 day.

As of 16.10.2014: The person might enter for a stay of 3 additional days (on 16.10.2014 the stay on 19.4.2014 becomes irrelevant (outside the 180 days period); on 17.10.2014 the stay on 20.4.2014 becomes irrelevant (outside the 180 days period; etc.).

As of 15.12.2014: The person might enter for 86 additional days (on 15.12.2014, the stay on 18.6.2014 becomes irrelevant (outside the 180 days period); on 16.12.2014, the stay on 19.6.2014 becomes irrelevant, etc.).

1.5. Situation regarding the Member States that do not yet fully apply the Schengen acquis, the Member States that do not participate in the EU Common Visa Policy and associated countries.

Member States that joined the EU in 2004 (Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia and the Czech Republic), 2007 (Bulgaria and Romania), and 2013 (Croatia) are bound by the Agreement as from its entry into force.

Only Cyprus, Romania, Bulgaria, and Croatia, do not yet fully implement the Schengen acquis. They will continue issuing national visas with a validity limited to their own national territory. Once these Member States fully implement the Schengen acquis, they will continue to apply the Agreement.

National law continues to apply to all issues not covered by the Agreement until the date of full implementation of the Schengen acquis by these Member States. As from that date, Schengen rules/national law shall apply to issues not regulated by the Agreement.

Bulgaria, Croatia, Cyprus and Romania are authorised to recognise residence permits, D visas and short stay visas issued by Schengen States and associated countries for short stays on their territory.

According to Article 21 of the Convention Implementing the Schengen Agreement, all Schengen States must recognise the long-stay visas and residence permits issued by each other as valid for short stays on each other's territories. Schengen Member States accept residence permits, D visas and short stay visas of associated countries for entry and short stay and vice versa.

The Agreement does not apply to the UK, Ireland and Denmark but comprises joint declarations about the desirability of those Member States to conclude bilateral agreements on visa facilitation with Ukraine.

A bilateral agreement on visa facilitation between Denmark and Ukraine entered into force on 1 March 2009. No negotiations on visa facilitation have taken place between Ukraine and, respectively, the United Kingdom and Ireland.

Although associated to Schengen, the Agreement does not apply to Norway, Switzerland, Liechtenstein and Iceland but comprises joint declarations about the desirability of those Schengen countries to conclude bilateral agreements on visa facilitation with Ukraine.

Norway has signed a bilateral visa facilitation agreement on 13 February 2008. This agreement entered into force on 1 September 2011.

Switzerland finalised the negotiations on a bilateral visa facilitation agreement in November 2011. Iceland has indicated that negotiations with Ukraine have begun.

1.6. European Union Agreement/Bilateral agreements.

Article 13 (1) of the Agreement stipulates that

"1. As from its entry into force, this Agreement shall take precedence over provisions of any bilateral or multilateral agreements or arrangements concluded between individual Member States and Ukraine, insofar as the provisions of the latter agreements or arrangements cover issues dealt with by the present Agreement."

As from the date of entry into force of the Agreement, provisions in the bilateral agreements in force between Member States and Ukraine on issues dealt with by the visa facilitation agreement ceased to apply. In accordance with European Union law, Member States have to take the necessary measures to eliminate the incompatibilities between their bilateral agreements and the European Union Agreement.

However, Art. 13(2) of the Agreement stipulates that

"2. The provisions of bilateral Agreements or arrangements between individual Member States and Ukraine concluded before the entry into force of this Agreement providing for the exemption of the holders of non-biometric service passports from the visa requirement shall continue to apply without prejudice to the right of the Member States concerned or Ukraine to denounce or suspend these bilateral agreements or arrangements."

The following Member States have a bilateral agreement with Ukraine providing for the exemption from the visa obligation for holders of service passports: Bulgaria, Croatia, Cyprus, Latvia, Lithuania, Hungary, Poland, Romania and Slovakia.

In accordance with Article 13(1), in so far as these agreements cover biometric service passport holders, Article 10(2) of the amended Agreement takes precedence over these Agreements. In accordance with Article 13(2), these agreements, which were concluded before the entry into force of the amending Agreement, shall continue to apply in so far as they cover non-biometric service passport holders, without prejudice to the right of the Member States concerned or Ukraine to denounce or suspend these bilateral agreements or arrangements. The visa exemption for the holders of non-biometric service passport granted by a Member State only applies for travelling on the territory of this Member State and not for travelling to the other Schengen Member States.

Should a Member State have concluded a bilateral agreement or arrangement with Ukraine on issues not covered by the European Union Agreement, this exemption would continue to apply after the entry into force of the European Union visa facilitation Agreement.

1.7. European Community Declaration on access of visa applicants and harmonisation of information on procedures for issuing short-stay visas and documents to be submitted when applying for short-stay visas.

In accordance with this European Community Declaration annexed to the initial Agreement, common basic information on access of visa applicants to diplomatic missions and consular posts of the Member States and on the procedures and conditions for issuing visas and on the validity of visas issued has been drafted to ensure that applicants are given coherent and uniform information. This information is available at website of the EU Delegation to Ukraine: http://eeas.europa.eu/delegations/ukraine/index_en.htm

Diplomatic missions and consular posts are requested to disseminate widely this information (on the information boards, in leaflets, on websites, etc) and to disseminate also precise information on the conditions for issuing visas, representation of Member States in Ukraine and the harmonised EU list of required supporting documentation.

II. GUIDELINES ON SPECIFIC PROVISIONS.

2.1. Rules that apply to all visa applicants

Important: It is recalled that the facilitations mentioned below regarding the visa handling fee, the length of procedures for processing visa applications, departure in case of lost or stolen documents, and the extension of visa in exceptional circumstances apply to all Ukrainian visa applicants and visa holders.

2.1.1. Visa handling fee.

Article 6(1) of the Agreement stipulates that:

"The fee for processing visa applications of Ukrainian citizens shall amount to EUR 35. The aforementioned amount may be reviewed in accordance with the procedure provided for in Article 14(4)."

In accordance with Article 6(1), the fee for processing a visa application is 35 EUR. This fee will apply to all Ukrainian visa applicants (including tourists) and concerns short-stay visas, irrespective of the number of entries. It also applies to visa applications lodged at the external borders.

Article 6(2) of the Agreement stipulates that:

"If Ukraine would reintroduce the visa requirement for EU citizens, the visa fee to be charged by Ukraine shall not be higher than EUR 35 or the amount agreed if the fee is reviewed in accordance with the procedure provided for in Article 14(4)."

Article 6(3) of the Agreement stipulates that:

"The Member States shall charge a fee of EUR 70 for processing visas in cases where, based on the distance between the applicant's place of residence and the place where the application has been submitted, the applicant has requested that a decision on the application be taken within three days of its submission, and the consulate has accepted to take a decision within three days."

A €70 fee shall be charged for processing visa applications in cases where the visa application and the supporting documents have been submitted by the visa applicant whose place of residence is known to be in the oblast in which the Member State to which the applicant wishes to travel has no consular representation (if in that oblast there is no consulate, nor visa centre, nor consulates of the Member States that have concluded representation agreements with the Member State to which the applicant wishes to travel), and when the diplomatic mission or consular post has agreed to take a decision on the visa application within three days. Evidence regarding the place of residence of visa applicant is provided in the visa application form.

In principle, Article 6(3) aims at facilitating applying for a visa by the applicants living at a large distance from the consulate. Should a long trip be needed in order to apply for the visa,

the aim is to issue it quickly, so that the applicant can receive the visa without having the need of undertaking the same lengthy travel for a second time.

For the above mentioned reasons, in cases where the "standard" processing time for a visa application by a given diplomatic mission or consular post takes 3 days or less, the standard €35 visa fee shall be charged.

For diplomatic missions and consular posts that have an appointment system, the period of time to get an appointment is not counted as part of the processing time (see also point 2.1.2).

Article 6(4) of the Agreement stipulates that:

"4. Without prejudice to paragraph 5 fees for processing the visa application are waived for the following categories of persons:

(a) for close relatives – spouses, children (including adopted) parents (including custodians), grandparents and grandchildren – of citizens of Ukraine legally residing in the territory of the Member States or citizens of the European Union residing in the territory of the Member State of which they are nationals;"

This paragraph regulates the situation of Ukrainian close relatives travelling to the Member States to visit Ukrainian citizens legally residing in the Member States or citizens of the European Union residing in the territory of the Member State of which they are nationals. Ukrainian visa applicants who are family members of a Union citizen, in the sense of Article 5(2) of Directive 2004/38/EC of 29 April 2004, shall be issued visas free of charge, as soon as possible and on the basis of an accelerated procedure.

"(b) for members of official delegations who, following an official invitation addressed to Ukraine, shall participate in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of one of the Member States by intergovernmental organisations;

(c) members of national and regional Governments and Parliaments, Constitutional Courts and Supreme Courts, in case they are not exempted from the visa requirement by the present Agreement;

(d) pupils, students, post-graduate students and accompanying teachers who undertake trips for the purpose of study or educational training;

(e) disabled persons and the person accompanying them, if necessary;" (N.B. In order to benefit of the waiving of the fee evidence should be provided that both visa applicants fall under this category.)

"(f) persons who have presented documents proving the necessity of their travel on humanitarian grounds, including to receive urgent medical treatment and the person accompanying such person, or to attend a funeral of a close relative, or to visit a close relative seriously ill;

(g) participants in international sports events and persons accompanying them;" (N.B. accompanying persons are only covered that do so in professional capacity; supporters shall not be considered as accompanying persons.)

"(h) persons participating in scientific, cultural and artistic activities including university and other exchange programmes;

- (i) participants in official exchange programmes organised by twin cities and other municipal entities;
- (j) journalists and the technical crew accompanying them in a professional capacity; (N.B. covered are the journalists covered by Article 4(1)(e)).
- (k) pensioners;" (N.B. In order to benefit of the waiving of the fee from this category, visa applicants have to present evidence proving their pensioner status.)
- "(l) drivers conducting international cargo and passenger transportation services to the territories of the Member States in vehicles registered in Ukraine;
- (m) members of train, refrigerator and locomotive crews in international trains, travelling to the territories of the Member States;
- (n) children under the age of 18 and dependant children under the age of 21." (N.B. in order to benefit of the waiving of the fee from this category, visa applicants have to present evidence proving their age; and –if under the age of 21- in addition their dependency.);
- "(o) representatives of the religious communities;
- (p) for members of the professions participating in international exhibitions, conferences, symposia, seminars or other similar events held in the territory of the Member States;
- (q) participants aged 25 years or less in seminars, conferences, sports, cultural or educational events, organised by non-profit organisations;
- (r) representatives of civil society organisations undertaking trips for the purposes of educational training, seminars, conferences, including in the framework of exchange programmes;
- (s) for participants in official EU cross-border cooperation programmes, such as under the European Neighbourhood and Partnership Instrument (ENPI).

The first subparagraph shall apply also where the purpose of the journey is transit."

The latter applies only if the purpose of travel to the third country is equivalent to one of the purposes listed under Article 6(4) (a) to (s) e.g. if the transit is needed to attend a seminar, to visit family members, to participate in an exchange programme of civil society organisations, etc in the third country.

The fee is fully waived for the above mentioned categories of persons. Moreover, according to Article 16 (6) of the Visa Code "in individual cases, the amount of the fee to be charged may be waived or reduced when to do so serves to promote cultural or sporting interests as well as interests in the field of foreign policy, development policy, other areas of vital public interest or for humanitarian reasons."

However, this rule cannot be applied to waive the €70 visa fee for processing visas in individual cases where the visa application and the supporting documents have been submitted by the visa applicant whose place of residence is known to be based far away from the diplomatic mission or consular post of the Member State and who belongs to one of the visa fee exempted categories listed in Article 6(4) of the Agreement.

It should also be recalled that the visa fee exempted categories of persons could still be subject to a service fee in case a Member State cooperates with an external service provider.

Article 6(5) of the Agreement stipulates that:

“5. If a Member State cooperates with an external service provider in view of issuing a visa the external service provider may charge a service fee. This fee shall be proportionate to the costs incurred by the external service provider while performing its tasks and shall not exceed EUR 30. The Member States shall maintain the possibility for all applicants to lodge their applications directly at their consulates. If applicants are required to obtain an appointment for the lodging of an application the appointment shall, as a rule, take place within a period of two weeks from the date when the appointment was requested.”

Maintaining the possibility for all categories of visa applicants to lodge their applications directly at the consulate instead of via an external service provider implies that there should be a genuine choice between these two possibilities. Even if direct access does not have to be organised under identical or similar conditions to those for access to the service provider, the conditions should not make direct access impossible in practice. Even if it is acceptable to have a different waiting time for obtaining an appointment in the case of direct access, the waiting time should not be so long that it would render direct access impossible in practice.

2.1.2. Length of procedures for processing visa applications.

Article 7 of the Agreement stipulates that:

"1. Diplomatic missions and consular posts of the Member States shall take a decision on the request to issue a visa within 10 calendar days of the date of the receipt of the application and documents required for issuing the visa.

2. The period of time for taking a decision on a visa application may be extended up to 30 calendar days in individual cases, notably when further scrutiny of the application is needed.

3. The period of time for taking a decision on a visa application may be reduced to 2 working days or less in urgent cases."

A decision on the visa application shall be taken, in principle, within 10 calendar days of the date of the receipt of the complete visa application and supporting documents.

This period may be extended up to 30 days when further scrutiny is needed- for example, for consultation of central authorities.

All these deadlines start running only when the application file is complete, i.e. as from the date of reception of the visa application and the supporting documents.

For diplomatic missions and consular posts that have an appointment system, the period of time to get an appointment is not counted as part of the processing time. When setting the appointment, it should be taken into account the eventual urgency claimed by the visa applicant in view of the implementation of Article 7(3). As a rule, appointments should take place within a period of two weeks from the date when the appointment was requested (cfr. Article 6(5)). A longer period should be an exception also in peak periods. The Joint Committee will monitor this issue carefully. The Member States will endeavour to ensure that appointments at the request of the members of official delegations of Ukraine to lodge applications at diplomatic missions and consular posts should take place as soon as possible, preferably within a period of two working days, in urgent cases when the invitation has been sent out late.

The decision about the reduced time for taking a decision on a visa application as defined in Article 7(3) is taken by the consular officer.

2.1.3. Extension of visa in exceptional circumstances.

Article 9 of the Agreement stipulates that:

"The citizens of Ukraine who do not have the possibility to leave the territory of the Member States by the time stated in their visas for reasons of force majeure shall have the term of their visas extended free of charge in accordance with the legislation applied by the receiving State for the period required for their return to the State of their residence."

Regarding the possibility of extending the validity of the visa in cases of force majeure -for instance, stay in a hospital due to unforeseen reasons/sudden disease/accident - where the holder of the visa does not have the possibility to leave the territory of the Member State by the date stated in the visa, the provisions of the Article 33(1) of the Visa Code shall apply as long as they are compatible with the Agreement (for example, the extended visa shall remain a uniform visa, entitling entry to the territory of all the Schengen Member States for which the visa was valid at the time of issue). However, under the Agreement the extension of the visa is done for free in case of force majeure.

2.2. Rules that apply to certain categories of visa applicants.

2.2.1. Documentary evidence regarding the purpose of the journey.

For all the categories of persons listed in Article 4(1) including drivers conducting international cargo and passenger transportation services only the indicated documentary evidence will be required regarding the purpose of the journey. For those categories of applicants no other documents regarding the purpose of stay must be asked for. As stated in Article 4(3), no other justification, invitation or validation regarding the purpose of the journey will be required.

If in individual cases doubts remain regarding the real purpose of the journey, the visa applicant shall be called for an (additional) in depth interview to the embassy/consulate where (s)he can be questioned regarding the actual purpose of the visit or the applicant's intention to return- cfr Article 21(8) of the Visa Code. In such individual cases, additional documents can be provided by the visa applicant or exceptionally requested by the consular officer. The Joint Committee will closely monitor the issue.

For the categories of persons not mentioned in Article 4, the current rules shall continue to apply regarding documentation proving the purpose of the journey. The same applies to documents regarding parents' consent for travel of children under 18 years old.

Schengen rules or national law shall apply to issues not covered by the provisions of this Agreement, such as recognition of travel documents, travel medical insurance and guarantees regarding return and sufficient means of subsistence (cfr supra I.1.2.).

In line with the "European Union Declaration "on documents to be submitted when applying for short-stay visas" attached to the Agreement, "the European Union will establish a harmonised list of supporting documents, in accordance with Article 48(1)(a) of the Visa Code, in order to ensure that applicants from Ukraine are required to submit, in principle, the same supporting documents"; Member States' Consulates, acting in Local Schengen Cooperation, are asked to ensure that Ukrainian visa applicants are given coherent and uniform basic information and are required to submit, in principle, the same supporting documents irrespectively of the Consulate of the Member State where they apply.

In principle, the original request or certificate of the document required by Article 4(1) shall be submitted with the visa application. However, the consulate can start processing the visa application with facsimile or copies of the request or certificate of the document. Nevertheless, the consulate may ask for the original document in case of the first application and shall ask for it in individual cases where there are doubts.

As the below lists of authorities sometimes also contain the name of the person who can sign the relevant requests/certificates, the Ukrainian authorities should inform the Local Schengen Cooperation when these persons are replaced.

Article 4- Supporting documents regarding the purpose of the journey

"1. For the following categories of citizens of Ukraine, the following documents are sufficient for justifying the purpose of the journey to the other Party:

(a) for members of official delegations who, following an official invitation addressed to Ukraine, shall participate in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of one of the Member States by intergovernmental organisations:

– a letter issued by an Ukrainian authority confirming that the applicant is a member of its delegation travelling to the other Party to participate at the aforementioned events, accompanied by a copy of the official invitation;"

The applicant's name must be indicated in the letter issued by the competent authority confirming that the person is part of the delegation travelling to the territory of the other Party to participate in the official meeting. The name of the applicant must not necessarily also be indicated in the official invitation to participate in the meeting, although this might be the case when the official invitation is addressed to a specific person.

This provision applies to members of official delegations whatever the passport (non-biometric service or ordinary passport) they hold.

"(b) for business people and representatives of business organisations:

– a written request from a host legal person or company, or an office or a branch of such legal person or company, state and local authorities of the Member States or organising committees of trade and industrial exhibitions, conferences and symposia held in the territories of the Member States;"

"(c) for drivers conducting international cargo and passenger transportation services to the territories of the Member States in vehicles registered in Ukraine:

– a written request from the national association of carriers of Ukraine providing for international road transportation, stating the purpose, duration, destination(s) and frequency of the trips;"

The competent authorities that provide for the international road transportation and are responsible for stating the purpose, duration, destination(s) and frequency of the trips of the drivers conducting international cargo and passenger transportation services to the territories of the EU Member States in vehicles registered in Ukraine, are:

Association of International Road Carriers of Ukraine (AsMAP/"AcMAII")

The mailing address of the AsMAP is:

11, Shorsa str.

Kyiv, 03150, Ukraine

Officials entitled to sign the requests are:

Kostiuchenko Leonid – President of the AsMAP of Ukraine;

Dokil' Leonid – Vice-President of the AsMAP of Ukraine;

Kuchynskiy Yurii – Vice-President of the AsMAP of Ukraine.

State Enterprise "Service on International Road Carriages (SE "SIRC")

The mailing address of the SE "SIRC" is:

57, av. Nauka

Kyiv, 03083, Ukraine

Tel. +38 044 524 21 01

Fax +38 044 524 00 70

Officials entitled to sign the requests are:

Tkachenko Anatolij – Director of the SE "SIRC";

Neronov Oleksandr – First Deputy Director of the SE "SIRC".

Ukrainian Road Transport and Logistics Union

The mailing address of the Ukrainian Road Transport and Logistics Union is:

28, Predslavinska str.

Kyiv, 03150, Ukraine

Tel./fax +38 044 528 71 30 / +38 044 528 71 46 / +38 044 529 44 40

Official entitled to sign the requests is:

Lypovskiy Vitalij – President of the Union

All-Ukrainian Association of Automobile Carriers (AAAC)(Всеукраїнська асоціація автомобільних перевізників)

The mailing address of the AAAC is:

139, Velyka Vasylkivska str.

Kyiv, 03150, Ukraine

Tel./ fax: +38044-538-75-05, +38044-529-25-21

Officials entitled to sign the requests are:

Reva Vitalii (Віталій Рева) - President of the AAAC

Glavatskyi Petro (Петро Главатський) - Vice President of the AAAC

e-mail: vaap@i.com.ua4. All-Ukrainian Association of Automobile Carriers (AAAC)
(Всеукраїнська асоціація автомобільних перевізників)

The mailing address of the AAAC is:

3, Rayisy Okipnoyi str.

Kyiv, 02002, Ukraine

Tel./ fax: +38044-517-44-31, +38044-516-47-26

Officials entitled to sign the requests are:

Vakulenko Volodymyr (Вакуленко Володимир Михайлович) - Vice President of the AAAC

5. Ukrainian State Enterprise "Ukrinteravtoservice" (Українське державне підприємство по обслуговуванню іноземних та вітчизняних автотранспортних засобів «Укрінтеравтосервіс»)

The mailing address of the Ukrainian State Enterprise "Ukrinteravtoservice" is:

57, av. Nauky

Kyiv, 03083, Ukraine

Officials entitled to sign the requests are:

Dobrohod Serhii (Доброход Сергій Олександрович) – Director General of the Ukrainian State Enterprise "Ukrinteravtservice" (phone: +38 044 524-09-99; cell. +38 050 463-89-32);

Kubalska Svitlana (Кубальська Світлана Сергіївна) – Deputy Director General of the Ukrainian State Enterprise "Ukrinteravtoservice" (phone: +38 044 524-09-99; cell. +38 050 550-82-62);

Taking into account the current problems with this category of visa applicants the Joint Committee shall closely monitor the implementation of this provision.

"(d) for members of train, refrigerator and locomotive crews in international trains, travelling to the territories of the Member States:

– a written request from the competent railway company of Ukraine stating the purpose, duration and frequency of the trips;"

The competent authority in the field of the rail transportation of Ukraine is the State Administration of Railway Transport of Ukraine ("Ukrzaliznytsia"/"Укрзалізниця").

The mailing address of "Ukrzaliznytsia" is:

5-7 Tverskaya str.

Kyiv, 03680, Ukraine

According to the responsibility allocation in the leadership of "Ukrzaliznytsia", the officials in charge responsible for providing the information concerning the purpose, duration and frequency of the trips of the members of train, refrigerator and locomotive crews in international trains traveling to the territories of the EU Member States are:

Bolobolin Serhii (Болоболін Сергій Петрович) – First Director-General of Ukrzaliznytsia (phone: +38 044 465 00 10);

Serhiyenko Mykola (Сергієнко Микола Іванович) – First Deputy Director-General of Ukrzaliznytsia (phone: +38 044 465 00 01);

Zhurakivskyy Vitaliy (Жураківський Віталій Олександрович) – First Deputy Director-General of Ukrzaliznytsia (phone: +38 044 465 00 41);

Slipchenko Oleksiy (Сліпченко Олексій Леонтійович) – Deputy Director-General of Ukrzaliznytsia (phone: +38 044 465 00 14);

Naumenko Petro (Науменко Петро Петрович) – Deputy Director-General of Ukrzaliznytsia (phone: +38 044 465 00 12);

Chekalov Pavlo (Чекалов Павло Леонтійович) - Deputy Director-General of Ukrzaliznytsia (phone: +38 044 465 00 13);

Matviiv Igor – Head of the Department of International Relations of Ukrzaliznytsia (phone: +38 044 465 04 25).

"(e) for journalists and the technical crew accompanying them in a professional capacity:

– a certificate or other document issued by a professional organisation or the applicant's employer proving that the person concerned is a qualified journalist and stating that the purpose of the journey is to carry out journalistic work or proving that the person is a member of the technical crew accompanying the journalist in a professional capacity;"

This category does not cover free-lance journalists.

The certificate or document proving that the applicant is a professional journalist and the original document issued by his/her employer stating that the purpose of the journey is to carry out a journalistic work or proving that the person is a member of the technical crew accompanying the journalist in a professional capacity must be presented.

The competent Ukrainian professional organisation proving that the person concerned is a qualified journalist is:

1. National Union of Journalists of Ukraine (NUJU) ("Національна спілка журналістів України", НСЖУ).

NUJU issues to the qualified mass-media employees the national professional journalist's cards and international press-cards of the standard pattern set by the International Federation of Journalists.

The mailing address of the NUJU is:

27-a Khreschatyk str.

Kyiv, 01001, Ukraine

The authorized person of the NUJU is:

Nalyvaiko Oleg Igorovych (Наливайко Олег Ігорович) – Head of the NUJU

Phone/Fax: +38044-234-20-96; +38044-234-49-60; +38044-234-52-09

e-mail: spilka@nsju.org; admin@nsju.org.

2. Independent Media Union of Ukraine (IMUU) Незалежна медіа-профспілка України.

The mailing address is:

Office 25,

27 – A, Khreshchatyk Str.,

Kyiv, 01001, Ukraine

The authorized persons are:

Lukanov Yurii (Луканов Юрій Вадимович)– Head of the IMUU

Vynnychuk Oksana (Оксана Винничук) – Executive Secretary of the IMUU

Phone + 38 050 356 57 58

e-mail: secretar@profspilka.org.ua

"(f) for persons participating in scientific, cultural and artistic activities, including university and other exchange programmes:

- a written request from the host organisation to participate in those activities;"

"(g) for pupils, students, post-graduate students and accompanying teachers who undertake trips for the purposes of study or educational training, including in the framework of exchange programmes as well as other school related activities:

- a written request or a certificate of enrolment from the host university, college or school or student cards or certificates of the courses to be attended;"

A student card can only be accepted as justification of the purpose of the journey when it is issued by the host university, college or school where the studies or educational training is going to take place.

"(h) for participants in international sports events and persons accompanying them in a professional capacity:

- a written request from the host organisation: competent authorities, national sport Federations and National Olympic Committees of the Member States;"

The list of accompanying persons in case of international sports events will be limited to those accompanying the sportsman/woman in a professional capacity: coaches, masseurs, manager, medical staff and head of the sports club. Supporters shall not be considered as accompanying persons.

"(i) for participants in official exchange programmes organised by twin cities and other municipal entities:

a written request of the Head of Administration/Mayor of these cities or other municipal entities;"

The Head of Administration/Mayor of the city or other municipal entity competent to issue the written request is the Head of Administration/Mayor of the host city or the municipality where the twinning activity is going to take place. This category only covers official twinnings.

"(j) for close relatives – spouse, children (including adopted), parents (including custodians), grandparents and grandchildren – visiting citizens of Ukraine legally residing in

the territory of the Member States or citizens of the European Union residing in the territory of the Member State of which they are nationals:

- a written request from the host person;"

This paragraph regulates the situation of Ukrainian close relatives travelling to the Member States to visit Ukrainian citizens legally residing in the Member States or citizens of the European Union residing in the territory of the Member State of which they are nationals.

The authenticity of the signature of the inviting person must be proved by the competent authority according to the national legislation of the country of residence.

It is also necessary to prove the legal residence of the inviting person and the family tie; for example providing together with the written request from the host person, copies of documents explaining his/her status, such as a photocopy of the residence permit and confirming the family ties.

This provision also applies to relatives of staff working in diplomatic missions and consulates travelling for a family visit of up to 90 days to the territory of the Member States except for the need to proof legal residence and family ties.

In line with the European Union Declaration on facilitations for family members, attached to the Agreement, "In order to ease the mobility of an extended number of persons which have family links (in particular sisters and brothers and their children) with citizens of Ukraine legally residing in the territories of Member States or with citizens of the European Union residing in the territory of the Member State of which they are nationals, the European Union invites the Member States' consular offices to make full use of the existing possibilities in the Visa Code for facilitating the issuance of visas to this category of persons, including in particular, the simplification of documentary evidence requested for the applicants, exemptions from handling fees and, where appropriate, the issuing of multiple-entry visas."

"(k) relatives visiting for burial ceremonies:

- an official document confirming the fact of death as well as confirmation of the family or other relationship between the applicant and the buried;"

The Agreement does not specify which country's authorities should issue the above mentioned official document: the country where the burial ceremony will take place or the country where resides the person who wants to visit the burial ceremony. It should be accepted that the competent authorities of both countries could issue such official document.

The above mentioned official document confirming the fact of death as well as the family or other relationship between the applicant and the deceased must be presented; e.g. birth and/or marriage certificates.

"(l) for visiting military and civil burial grounds:

- an official document confirming the existence and preservation of the grave as well as family or other relationship between the applicant and the buried;"

The Agreement does not specify whether the above mentioned official document should be issued by the authorities: of the country where the burial ground is located or those of the country in which the person who wants to visit the burial ground resides. It should be accepted that the competent authorities of both countries could issue such official document.

The above mentioned official document confirming the existence and preservation of the grave as well as of the family or other relationship between the applicant and the buried must be presented.

In accordance with the Declaration annexed to the Agreement, as a rule, short-stay visas for persons visiting military and civil burial grounds shall be issued for a period of up to 14 days.

"(m) for visiting for medical reasons and necessary accompanying persons:

– an official document of the medical institution confirming necessity of medical care in this institution, the necessity of being accompanied and proof of sufficient financial means to pay the medical treatment."

The document of the medical institution confirming the necessity of medical care in this institution and the proof of sufficient financial means to pay for the medical treatment, shall be submitted, should also confirm that it is necessary to be accompanied.

"(n) for representatives of civil society organisations when undertaking trips for the purposes of educational training, seminars, conferences, including in the framework of exchange programmes:

— a written request issued by the host organisation, a confirmation that the person is representing the civil society organisation and the certificate on establishment of such organisation from the relevant Register issued by a state authority in accordance with the national legislation;"

The document proving registration in Ukraine of a civil society organization is a letter issued by the State Registration Service of Ukraine with information from the Register of Public Associations.

"(o) for members of the professions participating in international exhibitions, conferences, symposia, seminars or other similar events held in the territory of the Member States:

— a written request from the host organisation confirming that the person concerned is participating in the event;

(p) for representatives of the religious communities:

— a written request from a religious community registered in Ukraine, stating the purpose, duration and frequency of the trips;"

The document proving registration in Ukraine of a religious community is an extract from the Unified State Register of legal entities and individual entrepreneurs with information that organizational and legal form of a legal entity is religious community.

"(q) for participants in official EU cross-border cooperation programmes, such as under the European Neighbourhood and Partnership Instrument (ENPI):

— a written request by the host organisation."

Important: The Agreement does not create any new liability rules for the physical or legal persons issuing the written requests. The respective EU/national law applies in case of false issuance of such requests.

2.2.2. Issuance of multiple-entry visas.

In cases where the visa applicant needs to travel frequently or regularly to the territory of the Member States, short-stay visas shall be issued for several visits, provided that the total length of these visits does not exceed 90 days per period of 180 days.

Article 5 of the Agreement stipulates that:

"1. Diplomatic missions and consular posts of the Member States shall issue multiple-entry visas with the term of validity of five years to the following categories of persons:

- (a) members of national and regional Governments and Parliaments, Constitutional Courts and Supreme Courts, national and regional prosecutors and their deputies, if they are not exempted from the visa requirement by the present Agreement, in the exercise of their duties;
- (b) permanent members of official delegations who, following official invitations addressed to Ukraine, shall regularly participate in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of the Member States by intergovernmental organisations;
- (c) spouses and children (including adopted), who are under the age of 21 or are dependant, and parents (including custodians) visiting citizens of Ukraine legally residing in the territory of the Member States or citizens of the European Union residing in the territory of the Member State of which they are nationals;
- (d) business people and representatives of business organisations who regularly travel to the Member States;
- (e) journalists and the technical crew accompanying them in a professional capacity.

By way of derogation from the first subparagraph, where the need or the intention to travel frequently or regularly is manifestly limited to a shorter period, the term of validity of the multiple-entry visa shall be limited to that period, in particular where

- in the case of the persons referred to in lit. a, the term of office,

- in the case of the persons referred to in lit. b. the term of the validity of the status as a permanent member of an official delegation,

- in the case of the persons referred to in lit. c, the period of validity of the authorisation for legal residence of citizens of Ukraine legally residing in the European Union,

- in the case of the persons referred to in lit. d the term of validity of the status as a representative of the business organisation or the work contract,

- in the case of the persons referred to in lit. e the work contract

is less than five years."

For these categories of persons, taking into account their professional status or the family relationship with a Ukrainian citizen legally residing in the territory of the Member States or a citizen of the European Union residing in the territory of the Member State of which they are nationals, it is justified to issue, as a rule, a multiple-entry visa with a validity of five years. In the previous Agreement the expression "with the term of validity of up to five years " left discretion to Consulates in deciding on the period of validity of the visa, setting up only the maximum length of validity. Under the amended Agreement this discretion has disappeared with the new wording "with the term of validity of five years", stipulating that, should the applicant meet all the requirements of Article 5(1), the term of validity of the multiple-entry visa shall be 5 years.

For persons falling under Article 5(1)(a), confirmation should be given regarding their professional status and the duration of their mandate.

This provision will not apply to persons falling under Article 5(1)(a) if they are exempted from the visa requirement by the Agreement, i.e. if they are holders of a diplomatic or biometric service passports.

For persons falling under Article 5(1)(b), proof must be presented regarding their permanent status as a member of the delegation and the need to participate regularly in meetings, consultations, negotiations or exchange programs.

For persons falling under Article 5(1)(c), proof must be presented regarding the legal residence of the inviting person (cfr. supra II.2.2.1).

For persons falling under Article 5(1)(d) and (e), proof must be presented regarding their professional status and the duration of their activities.

"2. Diplomatic missions and consular posts of the Member States shall issue multiple-entry visas with the term of validity of one year to the following categories of persons, provided that during the previous year they have obtained at least one visa, have made use of it in accordance with the laws on entry and stay of the visited State:

(a) drivers conducting international cargo and passenger transportation services to the territories of the Member States in vehicles registered in Ukraine;

(b) members of train, refrigerator and locomotive crews in international trains, travelling to the territories of the Member States;

(c) persons participating in scientific, cultural and artistic activities, including university and other exchange programmes, who regularly travel to the Member States;

- (d) participants in international sports events and persons accompanying them in a professional capacity;
- (e) participants in official exchange programmes organised by twin cities and other municipal entities.

- (f) representatives of civil society organisations travelling regularly to Member States for the purposes of educational training, seminars, conferences, including in the framework of exchange programmes;

- (g) for participants in official EU cross-border cooperation programmes, such as under the European Neighbourhood and Partnership Instrument (ENPI);

- (h) students and post-graduate students who regularly travel for the purposes of study or educational training, including in the framework of exchange programmes;

- (i) for representatives of the religious communities;

- (j) for members of the professions participating in international exhibitions, conferences, symposia, seminars or other similar events held in the territory of the Member States;

- (k) persons needing to visit regularly for medical reasons and necessary accompanying persons.

By way of derogation from the first subparagraph, where the need or the intention to travel frequently or regularly is manifestly limited to a shorter period, the term of validity of the multiple-entry visa shall be limited to that period."

In the previous Agreement the expression "with the term of validity of up to one year " left discretion to Consulates in deciding on the period of validity of the visa, setting up only the maximum length of validity. Under the amended Agreement this discretion has disappeared with the new wording "with the term of validity of one year", stipulating that, should the applicant meet all the requirements of Article 5(2), the term of validity of the multiple-entry visa shall be one year. Multiple-entry visas valid for one year shall be issued to the above mentioned categories if during the previous year (12 months) the visa applicant has obtained at least one Schengen visa and has made use of it in conformity with the laws on entry and stay of the State(s) visited (for instance, the person has not overstayed) and if there are reasons for requesting a multiple-entry visa. The Schengen visa obtained during the previous year can be one that has been issued by another Schengen state than the one where the applicant requested the new visa. In cases where it is not justified to issue a visa valid for one year, (for instance, if the duration of the exchange programme is of less than one year or the person does not need to travel frequently or regularly for a full year) the validity of the visa will be of less than one year, provided that the other requirements for issuing the visa are met.

"3. Diplomatic missions and consular posts of the Member States shall issue multiple-entry visas with the term of validity of a minimum of two years and a maximum of five years to the categories of persons referred to in paragraph 2 of this Article, provided that during the previous two years they have made use of the one year multiple-entry visas in accordance with the laws on entry and stay of the visited State unless the need or the intention to travel frequently or regularly is manifestly limited to a shorter period, in which case the term of validity of the multiple-entry visa shall be limited to that period.

4. The total period of stay of persons referred to in paragraphs 1 to 3 of this Article shall not exceed 90 days per period of 180 days in the territory of the Member States."

Multiple-entry visas valid from 2 years up to 5 years shall be issued to the categories mentioned under Article 5(2), provided that during the previous two years they have made use of the 1 year multi-entry Schengen visas in accordance with the laws on entry and stay in the territory(ies) of the visited State(s) and that the need to travel frequently or regularly is not manifestly limited to a shorter period. It has to be noted that a visa with a validity from 2 to 5 years, shall only be issued if the visa applicant has been issued two visas valid for one year - and not less- during the previous two years, and if (s)he has used these visas in accordance with the laws of entry and stay in the territory(ies) of the visited State(s). Diplomatic missions and consular posts shall decide, on the basis of the assessment of each visa application, the period of validity of these visas- i.e. from 2 to 5 years.

Regarding the definition of the criteria in Article 5(2): "provided that...there are reasons for requesting a multiple-entry visa", and Article 5(3): "provided that...the reasons for requesting a multiple-entry visa are still valid", the criteria set up in the Article 24(2)(a) of the Visa Code for issuing these type of visas shall apply: i.e. that the person needs to travel frequently to one or several Member States, for example on business.

There is no obligation to issue a multiple-entry visa if the applicant did not make use of a previous visa. Nevertheless, such a visa can be issued if the non-use of the previous visa is due to circumstances independent of the will of the applicant; for instance, a long absence from his job of a lorry driver due to illness.

Cfr II.2.2.1. regarding documents justifying the purpose of the journey for issuing multiple-entry visas for the categories mentioned in Article 5.

2.2.3. Holders of diplomatic and service passports.

Article 10 of the Agreement stipulates that:

"1. Citizens of Ukraine, holders of valid diplomatic passports can enter, leave and transit through the territories of the Member States without visas.

2. Citizens of Ukraine, holders of valid biometric service passports can enter, leave and transit through the territories of the Member States without visas.

3. Persons mentioned in paragraphs 1 and 2 of this Article may stay in the territories of the Member States for a period not exceeding 90 days per period of 180 days."

Existing bilateral agreements or arrangements providing for the visa exemption for holders of non-biometric service passports shall continue to apply, unless denounced or suspended (cfr. supra 1.6).

The posting of diplomats in the Member States is not regulated by the Agreement. The usual accreditation procedure applies.

III. STATISTICS

In order to allow the Joint Committee set up by the Agreement to monitor effectively the Agreement, diplomatic missions and consular posts of the Member States must submit statistics to the Commission every six months, regarding in particular, where possible, and specifying by month:

types of visas issued to the different categories covered by the Agreement;

the number of visa refusals for the different categories covered by the Agreement;

percentages of applicants called for a personal interviews per categories of persons;

five year multiple-entry visas issued for Ukrainian nationals (by country).

- percentages of visas issued free of charge to the different categories covered by the Agreement.