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- Replies from the Czech Republic to the additional questions presented by the Commission Services, Finland and the United Kingdom concerning the Schengen evaluation questionnaire

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

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

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**SCH-EVAL 45
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NOTE

from : the Czech Republic

to : the Schengen evaluation Working Party

No. prev. doc. : 6549/06 SCHEVAL 20 COMIX 178
6358/06 SCHEVAL 16 COMIX 160
6359/06 SCHEVAL 17 COMIX 161

Subject : Schengen evaluation of the new Member States

- Replies from the Czech Republic to the additional questions presented by the Commission Services, Finland and the United Kingdom concerning the Schengen evaluation questionnaire

Referring to additional questions to the questionnaire presented by the Commission Services (doc. 6549/06 SCH-EVAL 20 COMIX 178, e-mail request from 28 February concerning the additional answer to question no. 126f), the Finnish delegation (doc. 6358/06 SCH-EVAL 16 COMIX 160) and the UK delegation (doc. 6359/06 SCH-EVAL 17 COMIX 161), the delegation of the Czech Republic hereby submits its replies:

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Commission Services

- *Question No 1: Under which exact circumstances can the Government call upon soldiers to carry out border control and on which legal base?*

According to the Act on the Police of the Czech Republic (No. 283/1991 Coll.), the Government can call upon soldiers in case of an extraordinary situation in safeguarding the state borders if the means of the Police are not sufficient to safeguard the internal order and the security of the state. In such a case the soldiers have rights and duties of the Police, provided that the Government don't reduce these rights.

For year 2006, the Government has called upon 100 soldiers for the purpose of fulfilling the task of the Police in the field of public order. These soldiers fulfil tasks under command of a police officer and are armed. Soldiers are i.a. deployed at the Praha Ruzyne Airport for the purpose of maintaining public security and thus do not participate in border protection.

- *Question No 6: Do you intend to remain the current legislation providing for different rules for a border area of 5 km and 25 km respectively also with regard to future internal borders after lifting of internal border control?*

According to paragraph 9 of the Act on Control of the State Border of the Czech Republic (No. 216/2002 Coll., as amended by Act No. 481/2004 Coll.), the border control shall not be carried out at internal borders as laid down in paragraph 2 of this Act.

Therefore, competences ensuring the border control laid down in paragraph 4 of the above stated Act, i.e. competences at the border crossing points and in border area up to 5 km and 25 km respectively, will not apply to future internal land borders.

Provisions of paragraph 4 of the Act on Control of the State Border of the Czech Republic will apply to international airports with external borders. Checks will be carried out on passengers on flights arriving from and departing to the territory outside the contracting parties' territories as well as on passengers on flights with stop-over outside the territories of the contracting parties.

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Where protection of public order or national security (in the sense of the paragraph 9 of the Act on Control of the State Border) so require, provisions of paragraph 2 of the Act on Control of the State Border of the Czech Republic will apply for a limited period at internal borders to the extent and in manner appropriate to the situation. Provisions of paragraph 4 can be used in these cases.

In the light of the above stated reasons, the current legislation providing for different rules for a border area of 5 km and 25 km respectively – respective provisions of the Act on Control of the State Border of the Czech Republic - is assumed to be preserved with regards to carrying out of border checks at the international airports with external border and in cases of temporary reintroducing of checks at internal land borders.

- *Question No 27: How “administrative separation” is exactly carried out?*
- *When exactly in 2007 is the 2nd stage of the construction work at the Karlovy Vary Airport estimated to be finalised?*

“Administrative separation” means regime way of separate handling of Schengen and non-Schengen flights used at regional airports with a small volume of operation. The separation is in practice carried out by airport operator, which ensures that either only Schengen or only non-Schengen flights shall be handled at the same time. This management guarantees that passengers on Schengen and non-Schengen flights will not be mixed.

The deadline for termination of the second part of the modernisation of the Karlovy Vary Airport is not exactly set. The nearest possible date is estimated to be the end of 2007 depending on financial sources. As to the fulfilment of Schengen standards, the first part of the modernisation is relevant. This shall be finished in March 2007.

- *Questions No 37 and 39: Is there also a penalty for attempt, accomplice and instigation foreseen as set out in Article 2 of Directive 2002/90/EC? Is there a penalty for assistance for illegal residence (not entry) for financial gains in the territory?*

The legal system of the Czech Republic does not provide for penalties for persons who intentionally assist a person who is not a national of the Czech Republic to reside within its territory while violating the laws of the Czech Republic concerning the residence of aliens.

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Currently, penalty for assistance for illegal residence is envisaged only in the Aliens Act (No. 326/1999 Coll., as amended), which can penalize assistance for illegal residence in the territory for financial gains either as a petty offence or by administrative expulsion. This Act is applicable only to aliens.

Natural person – accommodation provider - has committed a petty offence if he/she has not announced the Police the accommodation of an alien (paragraph 157a of the Aliens Act.). The Police shall issue decision on administrative expulsion for up to 5 years to an alien who has employed an alien without work permit or who has arranged such an employment to an alien. Or if an alien has acted or were supposed to act as a legal person, which has employed an alien without work permit or has arranged such an employment (paragraph 119 b of the Aliens Act).

Penalties relating to illegal employment are also envisaged by the Employment Act (No. 435/2004 Coll., as amended). Pursuant to paragraph 139, a natural person has committed a petty offence if he/she has acted as an agent in arranging employment without relevant permit or breached this Act in any other manner when arranging employment as an agent or facilitated illegal employment of a natural person. A fine of up to CZK 2 million (cca EUR 60 000) can be imposed for the above petty offences.

The provisions of Directive 2000/90/EC shall be transposed to the Czech legal system by new amendment of the Criminal Code that is currently in the legislation process. New article 317 of the Code foresees penalties relating to illegal stay in the territory of the Czech Republic.

If approved by the Parliament and subsequently signed by the president, a person that enables, arranges or facilitates illegal stay in the territory of the republic shall be sentenced to a term of imprisonment of up to one year or by prohibition of activity. Up to three years of imprisonment shall face perpetrator who commits the above stated crime as a part of an organized group, who commits such a crime for financial gains, who commits such a crime repeatedly or who commits the crime with intention to hide or facilitate another crime. Six months up to five years of imprisonment, loss of property or financial penalty shall face perpetrator who gains with the above stated crime for him/herself or somebody else substantial benefit. Two up to eight years of prison and loss of property shall apply to a perpetrator who gains with the mentioned crime for him/herself or another person extensive benefit.

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- *Question No 41: Is the Aliens Act (No 326/1999 Coll. as amended) also applicable when entry is refused to third country nationals in transit? (Article 2 of Directive 2001/51/EC)*

Paragraph 104 of the Aliens Act (No. 326/1999 Coll., as amended) lays down obligations for carriers to transport an alien back abroad if the alien does not present a travel document or airport visum, provided the latter is precondition for a stay in the transit area of the international airport in the territory.

Transposition of the carriers' obligations arising from Article 2 of the Council Directive 2001/51/EC has been newly open in the framework of inter-ministerial discussions on revision of the current legislation with regard to the new Schengen Borders Code.

- *Question No 62: Do you have feedback on the efficiency of the training for example through tests at the end of the trainings?*

Yes, as a part of preparation before posting, visa officers and staff members after their training at the Ministry of Foreign Affairs have to pass an oral test, focused on specific aspects of their assignment.

- *Question No 69: Do you require travel medical insurance also from nationals of third countries listed in Annex II of Council Regulation 539/2001?*

Yes. Nationals of third countries listed in Annex II of the above stated Regulation are according to paragraph 5 of the Aliens Act required to present on request of the Police a certificate of travel medical insurance, which shall cover the costs of treatment in connection with an injury or a sudden illness in the territory, including the costs associated with the transport of the ill person to the state of which travel document the ill person is in possession, eventually to other state where he/she has been granted residence permit. The travel medical insurance shall cover costs up to 30 000 EUR minimally for the duration of the stay in the territory.

Exemption from this requirement applies to diplomatic and service passport holders.

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- *Questions No 72: Do you give the grounds for refusal in case of family members of EU citizens?*

Rules of Administrative Procedure (No. 500/2004 Coll.), effective since 1 January 2006, lay down in paragraph 155 obligation of the administrative authority (the Police and diplomatic mission) to inform on request the respective person (alien) in writing about grounds that have led in his/her case to refusal of the visa application (reasons for not granting a visa are listed in paragraph 56 of the Aliens Act). This obligation also applies to family members of EU citizens.

The obligation for visa officers to give the grounds for refusal in all cases, not just in cases of family members of EU citizens, is also encountered in recently amended internal regulation for visa officers.

- *Question No 73: Do you issue visas free of charge to citizens of third countries on the basis of nationality?*

The respective Czech national law (Administrative Fees Act) gives the Ministry of Foreign Affairs of the Czech Republic a right to lower or waive visa fees in cases of reciprocity or national interest. Based on this, the Czech Republic issues visas free of charge to citizens of certain third countries. As this provision does not comply with communitarian rules of law, it shall be removed as of the date of the full integration of the Czech Republic into the Schengen area at the latest.

- *Question no 75: Do you issue visas at the border to family members of Union citizens?*

Currently, the Aliens Act enables the issue of transit visa and visa for a stay up to 90 days at the border under the following specific circumstances which also apply to family members of EU citizens:

An application for issue of transit visa can be lodged at a border crossing point, if the alien, for unforeseeable serious reasons, had not been able to lodge the application at the diplomatic mission and applies for the issue of the visa for humanitarian reasons, for the sake of the interests of the Czech Republic, on the basis of international obligations or for some other serious reason. In these cases, the Police shall issue the visa and affix it to the travel document (paragraph 22, section 5 of the Aliens Act).

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An application for issue of a visa for a stay up to 90 days can be lodged with the Police at a border crossing point if an alien had been unable to lodge the application at the diplomatic mission for unforeseeable reasons and if the alien applies for the visa for humanitarian reasons, for the sake of the interest of the Czech Republic, on the basis of international obligations or for some other serious reason (paragraph 26 section 5 of the Aliens Act). The visa granted pursuant to section 5 shall give the right to stay in the territory for a maximum of 15 days. Such a visa shall be granted and affixed to the travel document by the Police (paragraph 25 section 6).

Explicit entitlement of family members of EU citizens to be issued visas at the border of the Czech Republic shall arise from the new amendment of the Aliens Act that is currently in the legislative process.

The amendment of the Aliens Act, passed by the House of Commons of the Parliament of the Czech Republic on 1 February 2006 and currently discussed in the Senate, will – if passed in the below stated envisaged form - enable to issue transit visas and visas for a stay up to 90 days at the border to family members of EU citizens:

In the case of the transit visas (paragraph 22 of the Aliens Act), the amendment newly contains section 6, which entitles the family member of EU citizen to lodge an application for transit visa at a border crossing point. The Police shall grant visa in this case and affix it to the travel document. The family member of EU citizen is obliged to lodge the application for transit visa solely together with the travel document, document confirming that he/she is a family member of EU citizen and photo (paragraph 23, section 3 of the Aliens Act).

As to visa for a stay up to 90 days (paragraph 26 of the Aliens Act), the amendment in section 6 newly introduces entitlement of family member of EU citizen to lodge an application for granting visa for a stay up to 90 days at a border crossing point. The visa shall be granted and affixed to the travel document by the Police. Family member of EU citizen is obliged to lodge the application solely together with the travel document, document confirming that he/she is a family member of EU citizen and photo (paragraph 27 section 4 of the Aliens Act).

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- *Question No 81: How many days are required for a reply from the central authorities? Can the consular post issue the visa, despite the absence of a reply, after a certain period of time has elapsed?*

The Aliens Act (No. 326/1999 Coll., as amended) stipulates a 30 days limit to process the visa application from the date on which the application was lodged. In practice, almost all applications are processed within 5 working days. If there is no response of the central authority (Directorate of Alien and Border Police Service) within 5 working days, consular post can decide on its own, unless the computer visa system indicates to wait. Such decision is logged in the system; manual check in the national information system (Alien Information System - Register of Undesirable Persons) is mandatory.

Consultations between consular posts and central authority on important matters that could influence decision on application proceed via messages attached to the application for a visa. Main reason for mutual consultations is prevention of potential risks for the Czech Republic such as terrorism, illegal migration etc.

- *Are your diplomatic missions and consular posts empowered to issue residence permits?*

No, diplomatic missions and consular posts of the Czech Republic are not empowered to issue residence permits. Resident permits are granted by the Police.

Basically, applications for resident permits can be lodged at the Police in the territory of the Czech Republic during the stay based on a long-stay visa (see below). It is, however, possible to apply for a resident permit for the purpose of reunification of family (and prospectively for scientists and students on the basis of EU directives) at a diplomatic mission. Even in this case it is the Police who grant the permit.

Diplomatic missions accept applications for long-stay visas (for stays exceeding 3 months). An application is transferred to the Police who grant or refuse a long-stay visa. Before sending an application for a long-stay visa to the Police, a diplomatic mission is entitled to state its opinion on the application. The Police shall take this opinion into account in the process of issuing the visa. An issued visa is then sent to the diplomatic mission and handed over to the applicant.

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- *In Annex 15 CCI your country provides no form for proof of invitation, sponsorship and accommodation. Are there no legal provisions/administrative rules or practices on such forms?*

The Aliens legislation of the Czech Republic does not currently stipulate concrete standards of forms for proof of invitation, sponsorship or accommodation.

However, the Aliens Act (No.326/1999 Coll., as amended) states volume of data that shall be included in the form for proof of invitation and explicitly defines that the application for verification of an invitation shall be lodged while using an official form (concrete template has been created by the Directorate of Border and Alien Police Service). Authenticity of this form can be verified through electronic visa issuing system and the form contains security features. An interdepartmental working group has been established in order to prepare a new updated version of this form, which will be released during this year and subsequently implemented into CCI.

The form for verification of an invitation contains data of inviting and invited person and their civil-law obligation. Part of this obligation is that the inviting person is obliged to cover costs relating to the alien's subsistence, accommodation and health care during the alien's stay in the territory until he/she leaves the territory (paragraph 15 of the Aliens Act).

An alien is required to provide supporting documents regarding funds to cover the stay in the territory while applying for a visa (paragraph 27 section 1 of the Aliens Act) and possibly on request of the Police when entering the territory (paragraph 5 of the Aliens Act).

Funds to cover the stay in the territory shall be proved by providing financial means amounting at least to the multiplication of the subsistence minimum (paragraph 16 section 1 of the Aliens Act) or a document certifying payment of the services associated with the stay of the alien in the territory or a document certifying that such services shall be provided free of charge (paragraph 13 section 1 of the Aliens Act). To prove the availability of funds for the stay in the territory, the following may be used as well: an account statement concerning an account maintained in a bank in the name of the alien, indicating that the alien is free to use the finances in the amount defined in section 1 during the alien's stay in the Czech Republic; or some other document certifying the availability of the funds, such as a valid internationally recognised credit card (paragraph 13 section 2).

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- *Please describe the practice followed when issuing visas to applicants who are non-residents in the country where they lodge their application?*

The Aliens Act does not impose any restriction, only legal status of the applicant in the third country. Due to national security, citizens of certain countries are not allowed to submit their applications in countries of non-residence. Exemptions are possible to make (national interest) by head of visa section.

- *Please describe the practice followed when issuing visas to holders of travel documents which you do not recognise?*

Usually the visa is not granted in such case. In certain cases (national interest, humanitarian grounds, etc.) the form for affixing a visa is used.

Additional question of the Commission Services to the additional answer to question 126 f

- *How many orders for temporary discontinuance of criminal prosecution with a view to a discovery of all interested parties involved in drug production and trafficking were issued between 2003-2005 and to which national authorities were these orders issued?*

The temporary discontinuance of criminal prosecution does not constitute a special part of the criminal statistics. Therefore it is not possible to provide an exact number of such orders issued between 2003 and 2005. Nevertheless, it shall be stated that this instrument is used relatively frequently. Out of approx. 60-70 cases of organized drug criminal proceedings processed by the National Drug Headquarters annually, the temporary discontinuance of criminal prosecution is used in the majority of cases.

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Finnish delegation

- *Question No 74: In answers (Statistics) to this Question it can be noted that in some of the new Member State Embassies inside the Schengen Area the rejection rate is 5 - 10 %. The same Member States have a rejection rate of 1 – 2 % in Kiev, Ukraine. The average rejection rate of the Schengen Embassies in Kiev is 15 %.*
- a) Is it possible to specify the reason for this, i.e. why the rejection rates of applications received from the Schengen Area is bigger than those concerning applications received from outside the Schengen Area?*
 - b) Do your Embassies follow the rejection rates of the other Member States and are they aware of the reasons to the rejections of the other Member States?*
 - c) Do you follow the exchange of statistical information on the issuing of uniform visas (Doc. 9749/05 VISA 134 COMIX 377 of 3 June 3 2005 + COR 1 of 2 August 2 2005).*

The Embassy of the Czech Republic in Kiev has indeed its average rejection rate around 5 %, however the Czech consulates in the Schengen area have average rejection rate lower than 1 %. The reason for lower rejection rate of the Embassy of the Czech Republic in Kiev is given by the fact that majority of visa applications, which could be rejected on formal grounds (e.g. because of missing requirement) are rather returned to applicants with an explanation what steps need to be taken in order to apply successfully. Visa officers have a possibility to study rejection rate through the local consular cooperation. The Czech Republic exchanges its statistical data with other EU member countries through LCC.

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UK delegation

- *Question No 2: What are the ABPS (“Alien and Border Police Service”) doing to tackle forged documentation? Does it have a strategy to tackle the problem?*

Strategy of the ABPS on combating forged documents at the national level was created prior the accession of the Czech Republic to the EU. After the accession, the strategy has been merely modified so that there are no major discrepancies with the strategy of the EU and individual member states. Thus, the strategy of the ABPS currently arises to a large extent from the common EU strategy, which it further modifies with regard to specific conditions of the Czech Republic.

The strategy of the ABPS on combating forged documentation is based on the following key principles: training, technical equipment, exchange of information and knowledge and preparation for introduction of biometric features.

Within the ABPS, very effective system of more-layer training of police officers – specialists on travel documents – has been established enabling regular exchange of knowledge and information in the field of travel documents directly for police officers in service. The ABPS also cooperates in this field with other parts of the state administration, e.g. with the Ministry of Foreign Affairs where it participates in regular training of consular diplomatic staff carried out before their posting abroad. As to international cooperation, the ABPS has been participating in the joint programme of EU member states for training of specialists for examination of travel documents and has thus confirmed its readiness to use newly established training programme prepared by ACT in Traiskirchen.

Of special importance is exchange and modernization of technical equipment for checks of travel documents taking place in particular at workplaces, where an expert examination and evaluation of travel documents is carried out. Separate database of specimen of travel and other documents has been established within the ABPS and is currently available in its updated version on the Intranet network both for the ABPS bodies as well as for other bodies of the Police of the Czech Republic.

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This database contains also up-to-date information on detected forged and falsified travel and other documents. The ABPS also maintains a catalogue of travel documents that is provided on a regular basis to the Customs authorities and since 2006 also distributed to diplomatic missions of the Czech Republic abroad. Diplomatic missions also annually receive the document “Assessment of Travel Document Misuse in Illegal Migration in the Czech Republic”.

Another area exceeding the scope of the national strategy is common procedure of EU member states in introducing biometric features into travel documents. Strategy of ABPS in this field envisages the preparation ensuring that all conditions required are met. This concerns in particular the issue of e-documents at the stated date at the latest, training of officials charged with activities connected to entering of biometric features in travel documents and further training of police officers who shall carry out the respective check of documents. As to the future, stress is put on gradual equipment of ABPS workplaces with technical equipment for the control of biometrics (reader).

With regards to the preparation of the Czech Republic for the full participation in the Schengen cooperation, more attention is paid to the ABPS workplace at the future EU external borders. In the fight against forged documentation, the emphasis is put on the equipment of these workplaces with the correspondent technical equipment and in particular on qualified trained personnel who will participate in the passengers' check-in. This process has already started and will consist also of organizational provisions.