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

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**Brussels, 22 May 2002 (31.05)
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**VISA 75
COMIX 332**

NOTE

from : Spanish delegation
to : Visa Working Party

Subject : Report on local consular cooperation in relation to visas under the Spanish
Presidency (first half of 2002)

INTRODUCTION

The Spanish Presidency, aware of the vital role of local consular cooperation in the effective application of the common visa system, has sought to continue the valuable work carried out under previous Presidencies and to promote increased cooperation between the Member States' diplomatic missions and consular posts on the basis of the guidelines drawn up by previous Presidencies, with a view to contributing to the overall coherence of the system.

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The Spanish Presidency set itself the following overall objectives as regards reinforcing common consular cooperation:

1. Continue to hold regular meetings of the heads of consular posts on the spot, consolidating cooperation in places in which it is considered excellent by those responsible for visas, and giving new impetus to cooperation in places where it had lost momentum.
2. Identify issues that give rise to difficulties, examining them at local level and, if appropriate, in the Visa Working Party, in order to move progressively towards greater approximation of national laws and practices.
3. Conduct a review of work and initiatives to date aimed at achieving greater harmonisation in the practices of consular posts.

A summary of the cooperation issues dealt with at local consular meetings under the Spanish Presidency is set forth below.

Obviously, this summary does not include other issues dealt with directly by the Visa Working Party which affect local consular cooperation or may affect it in the future: visa database; continuation of preparatory technical/legal studies with a view to setting up, should it be considered necessary, joint offices for the issue of common visas; adaptation of the CCI to take account of the urgency of consultations and of the new uniform format for visa-stickers with new headings and an integrated photograph, etc.

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1. HARMONISATION OF SUPPORTING DOCUMENTS FOR VISA APPLICATIONS

Work has continued on the process initiated under previous Presidencies aimed at harmonising the supporting documents to be submitted along with visa applications, depending on the purpose of the journey and the type of visa, at those consular posts at which agreement has not yet been reached. Instructions to concentrate on this aspect have been issued to 45 consular posts located in high-risk countries as regards migration. The results so far have been very positive.

The importance of this issue in preventing visa shopping is undeniable.

Harmonisation initiatives have to be implemented at local level, since account needs to be taken of the specific circumstances in each country and of the characteristics of visa applicants in each case. A uniform list of general requirements could not be extrapolated to all the capitals. The circumstances of visa applicants vary from one country to another, and it is necessary in some cases to demand more guarantees than in others.

Drawing up a fully uniform list of supporting documents for the different types of Schengen visa does not seem feasible without, for example, making medical travel insurance compulsory.

2. HARMONISATION OF VISA FEES

Reports from diplomatic missions and consular posts have revealed considerable disparities in the fees applied to visas by Member States.

The reasons for these differences vary. Annex 12, which sets out the fees to be charged for visas, allows Member States room for manoeuvre by setting minimum and maximum limits for fees.

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Under the Belgian Presidency, the Council approved a Decision amending Annex 12 and moving from the concept of fees for issuing visas to the concept of handling fees; we are currently in the transition period prior to the application of that Decision.

Application of the above Decision could signal major progress as regards harmonisation. However, it does not resolve other factors which contribute to the disparities in the fees finally charged to visa applicants and which derive from the different practices followed by Member States in this area.

The internal legislation of certain Member States includes the obligation to charge a fee for the visa form (the recently approved Annex 16 to the CCI, which will be compulsory as from January 2003, stipulates that it will be free). It is also a fact that fees are charged in different currencies in some countries. Moreover, even when the fee is charged in the currency of the recipient country, the exchange rate between the euro and the currency in which the fee is charged is not always updated with the same frequency. Another difference is that in some cases the fee is not reimbursed in the event of refusal and in others it is reimbursed either in full or in part.

As a result of the high level of fraud in certain countries, diplomatic missions and consular posts encounter considerable difficulties in verifying the authenticity of the documents submitted together with visa applications. In addition to the manipulation of travel documents aimed at removing evidence of previously rejected visa applications, or the manipulation of visas already issued, in some countries the supporting documents submitted together with the visa application are often forged (bank statements to prove the sufficiency of financial resources, letters of invitation from the Member States, documents evidencing family relationships, certificates of employment, etc). In short, these are sometimes authentic documents, the content of which is false.

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The diplomatic missions and consular posts of some Member States resort to reputable local lawyers to verify such documents. Others even use DNA tests to check that family relationships are genuine.

In view of this problem, which is more frequent than would appear, and given that certain embassies and diplomatic missions (such as those located in Islamabad) complain of a lack of understanding on the part of their national authorities of the problems they encounter, the possibility of classifying as administrative expenditure the use of reputable local lawyers to verify documents, as well as the pooling of the resulting information, could be examined

3. HARMONISATION OF THE TABLE OF TRAVEL DOCUMENTS

As mentioned in the Belgian Presidency's conclusions, there is a manual of documents to which a visa can be affixed, as provided for in Annex 11 to the Common Consular Instructions, which sets out, in the form of a list, whether or not the different travel documents of third States are recognised by each Member State.

However, reports from the Member States' representations reveal a wish for more harmonisation in this area.

The differences in the treatment of travel documents could be due in part to insufficient knowledge of their characteristics (colour and appearance of the document, number of pages, headings, etc.) since specimens are not available and, in part, to the fact that they do not include sufficient security features to prevent possible forgery or manipulation (integrated photograph, protective film over the headings containing personal data, machine-readable, etc.).

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When adopting a decision on the recognition or otherwise of a travel document for affixing a visa, it is undoubtedly important to have information on the persons or categories of person receiving visas and on the criteria for issuing them, as well as on other factors, such as whether the travel document guarantees return to the country of issue. Lastly, there are political considerations which may incline a Member State towards recognition or otherwise.

Information on local consular cooperation indicates the limited availability of specimens of authentic documents and forgery bulletins and suggests that progress towards greater harmonisation means that work needs to start on this issue in the Visa Working Party, in conjunction with other working parties such as the Working Party on Frontiers (including false documents), with a view to developing a database of authentic documents which would be constantly updated and available to consular posts.

Analysis could begin in the Visa Working Party with authentic specimens which could be entered in a document bank, so as to facilitate joint study of their technical and security features, harmonising the criteria outlined above in the light of the criteria established by relevant international organisations such as the ICAO, with a view to moving towards a common policy of recognition or non-recognition.

Such a databank should be regularly updated and should be accessible via a computer link to diplomatic missions and consular posts. It would be a very useful consultation tool before making a decision on the visa sticker.

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4. HARMONISATION OF ANNEX 2 TO THE COMMON CONSULAR INSTRUCTIONS

Annex 2 to the Common Consular Instructions sets out in table form the policies followed by Member States in relation to visa requirements or exemptions for the holders of diplomatic and service passports.

Embassies and consular posts would also like to see greater harmonisation in this area.

5. VISAS WITH LIMITED TERRITORIAL VALIDITY

As stipulated in Annex 14 to the CCI and as emphasised in previous Presidency reports, visas with limited territorial validity should only be issued by way of exception.

The exceptional nature of LTV visas, of the obligation to inform other Member States of the issue of LTV visas and of the obligation to exchange statistics on the visas issued has been reiterated.

6. TREATMENT OF VISA APPLICATIONS SUBMITTED BY TRAVEL AGENCIES

Local consular cooperation meetings under previous Presidencies emphasised the need for improved coordination on this issue. Under a joint Belgian-Spanish initiative, agreement was reached in the **Visa Working Party** on a draft Decision on the adaptation of Part VIII of the Common Consular Instructions in order to enlarge upon the provisions in Part VIII on the treatment of visa applications submitted by travel agencies to diplomatic missions and consular posts. Detailed consideration was given to the comments and experience of consular posts in drawing up the draft Decision.

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In order to ensure the highest possible degree of harmonisation in this area, the draft Decision supplements the arrangements for and monitoring of cooperation with private administrative agencies, local travel agencies and package tour operators in the processing of visa applications with the diplomatic missions and consular posts of the Member States.

The text itself, to be incorporated into the CCI, states that the question of visa applications lodged by agencies will be the subject of ongoing assessment at the regular local consular cooperation meetings.

In any event, consular cooperation appears to be good in general in those cities in which travel agencies are currently involved in submitting visa applications, particularly as regards exchanging information on unreliable travel agencies.

7. GROUNDS FOR AND NOTIFICATION OF REFUSALS TO GRANT VISAS

The document drawn up under the Belgian Presidency noted that the procedures for notifying and giving reasons for visa refusals and the possibilities of appealing against decisions rejecting visa applications vary considerably depending on internal legislation. These differences (for example, as regards the obligation or otherwise to give grounds for refusals, the time limits for adopting decisions - which differ according to whether or not the decision to grant or refuse visas is taken centrally and the possibility of administrative or judicial appeals, which may lead a visa applicant who has had a visa application refused to believe he has a second chance) may have the unwanted effect of encouraging visa shopping.

At present, the CCI stipulates that only those Member States which, pursuant to their national legislation, are obliged to give grounds for and notify visa refusals, should refer to this common text.

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This is one of the issues on which it will not be possible to move towards greater harmonisation at local level owing to differences in internal legislation. For this reason, the Spanish Presidency has opted to issue a questionnaire on notification, grounds for refusal and procedures for both administrative and judicial appeals, so as to gain a clear and in-depth understanding of the basis for national laws (the questionnaire was also communicated at local level in some capitals so as to better identify existing disparities). In the light of the responses, and after evaluation by the Visa Working Party, steps could be taken to identify possible areas of approximation in this matter and to move where possible towards greater harmonisation.

8. USE OF THE CCI STAMP

Reports from the consular posts show that some progress has been made on this issue: reiterating and highlighting the relevant CCI provisions has resulted in more widespread use of the stamp, albeit on the basis of individual models for each embassy or consular office.

Progress has also been made on harmonisation of the stamp at local level in a considerable number of embassies and consulates where work is being carried out in this area. For example, a common uniform format is currently available in capitals such as Damascus, which shows the feasibility of a common format at local level and should encourage continued efforts in other cities.

However, it has been observed that full harmonisation is sometimes not possible at local level since the legislation of certain Member States stipulates that a specific stamp format must be used throughout the world.

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The reports received indicate that the effectiveness of the stamp is limited in certain countries owing to the ease with which visa applicants can obtain a new blank passport in order to eliminate traces of previous visa applications or refusals. Until the visa database starts up, it is undoubtedly a very effective instrument and efforts should continue to be made to promote its harmonisation at local level. Its effectiveness has also been undermined by the fact that some embassies of third States place their visa stickers on top of the stamps affixed by the embassies or consulates of Member States; this problem could be resolved by action at local level.

9. REGULAR EXCHANGE OF INFORMATION

It has been observed that the practice of regularly exchanging lists of *mala fide* visa applicants is widespread; this is done either orally or in writing on a case-by-case basis or by sharing computerised lists, and most embassies and consulates have on-site databases. This cooperation is highly valued, and it is recommended that the embassy or consulate of the Member State holding the Presidency should be responsible for managing and updating such exchanges.

FINAL ASSESSMENT

Common consular cooperation is one of the pillars of the Schengen visa system and the overall effectiveness and coherence of the system is largely dependent on its smooth functioning.

It is therefore highly advisable to continue to move towards greater harmonisation and to continue to implement the existing provisions of the Common Consular Instructions.

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Although the CCI devotes a chapter to consular cooperation, which has been supplemented by the sections relating to travel agencies, the effectiveness of cooperation depends to a great extent on the personnel serving in the diplomatic missions and consular posts, and on whether they have up-to-date specialist training. In the short and medium term, harmonisation should be extended to equipment, communications between consular posts and the possibility of sharing stored information.

The Visa Working Party, through the rotating Presidency, should ensure that the excellent level of cooperation that exists in some countries continues, and that where necessary cooperation is given new impetus.

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