



BULLETIN

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New Visa Code of the European Union

by Rafał Kownacki

The new EU Visa Code came into force on 5 April 2010. It contains uniform regulations for the 25 Schengen states observing the Common Visa Policy. The Visa Code structures the applicable provisions and establishes common principles and conditions for visa issuing. The uniform visa application form has been simplified, the number of persons exempt from visa fees raised, the right to an effective remedy against visa rejection decisions granted, all of which makes for a positive appraisal of the new Visa Code. Importantly, the Code's new regulations specifying the competence for examining visa applications are especially significant for Poland.

Common Visa Policy. The 1985 Schengen Agreement and the 1990 Convention represent a cornerstone of the Common Visa Policy. Initially, they applied in the Benelux, France and Germany providing for the removal of systematic border controls between the participating countries. The Amsterdam Treaty incorporated the Schengen Agreements into the *acquis communautaire* on 1 May 1999. Consequently, the Council of the European Union passed the implementing decisions of 20 May 1999, the first of which (1999/435/EC) determined the legal instruments constituting the Schengen *acquis* and ordered for them to be published in the Official Journal of the European Community. The other decision (1999/436/EC) determined the legal basis for each of the provisions or decisions which constitute the Schengen *acquis*. From among the EU Member States, the United Kingdom and Ireland opted out of Schengen's border control arrangements under the 1990 Convention. Currently, Romania, Bulgaria and Cyprus are in the process of implementing the Schengen *acquis*. Beside the 22 EU Member States, Common Visa Policy applies in the three associated countries: Iceland, Norway and Switzerland. Common conditions were formed under the Schengen *acquis*. Accordingly, third country nationals can enter the territories of the Schengen countries providing they are in possession of a valid travel document, a visa (if required from citizens of the country of origin), they are able to present the purpose of their visit, and have sufficient means of subsistence for the whole duration of the stay, and for return to their country of origin. They may not appear in the Schengen Information System (SIS) as EU undesirable persons or as persons posing a threat to public order. If there is no indication to the contrary, persons who are granted the visa to enter one of the EU Member States (the so-called universal Schengen visa) may use it on entering or staying in other Schengen countries. It applies only to the so-called short-term stays, i.e. up to three months. Long-term visas were not included in the harmonisation process under the Common Visa Policy. However, under the Council Regulation (EU) of 28 May 2001 long-term visas may replace short-term visas in the first three months since the expiry date, consequently enabling transit to the territory of the country which issued the national visa. A consolidated list of countries whose citizens are required to be in possession of visas is in place. It has been adopted by the Council Regulation (EU) 539/2001 of 15 March 2001 under Art. 62 of the TEC (presently Art. 77 of the TFEU).

EU Visa Code. Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) entered into force on 5 April 2010. The Visa Code accommodates the need for the standardisation of provisions. Previously, each Member State had its individual provisions regarding visa issuing, which made visa procedures incoherent, complicated and unpredictable. The introduction of the Common Visa Policy makes the granting of Schengen visas to third country nationals more transparent and objective.

The general provisions of the Visa Code establish the procedures and conditions for issuing visas for transit through or intended stays in the territory of the Member States not exceeding three months in any six-month period. For Poland and other EU border states it is important to determine the principles under which to select a Member State responsible for processing visa applications. Under Art. 5 of the Visa Code it is a Member State whose territory constitutes the sole destination of the visit. If the visit includes more than one destination, the country competent for processing visa applications is the Member State whose territory constitutes the main destination of the visit in terms of the length or purpose of stay. If no main destination can be determined, it is the Member State whose external border the applicant intends to cross in order to enter the territory of the EU Member States. The last situation imposes special liabilities on countries which, like Poland, are part of the external border of the European Union. In the event no destination on the territory of the EU can be determined, the country where the first crossing of the EU border occurred is responsible for processing the visa application. The situation described gains special importance in light of the Council Regulation (EC) No 343/2003 of 18 February 2003 (the so-called Dublin II) establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. As a result of the arrangements ensuing from this Regulation, it is imperative to determine a country which issues a visa. Therefore, under Art. 9 (2) of Dublin II Regulation, in the event an asylum applicant is in possession of a valid visa, the Member State which issued that visa is responsible for examining the asylum application.

Through the standardisation of the provisions regarding the processing of visa applications and the issuing of visas, the EU Visa Code makes it possible for the procedures to be more transparent. A visa application should be lodged using the harmonised form available in consulates free of charge, also in the official language of the country hosting the consulate. Art. 13 of the Code introduces the procedures for taking biometric data from visa applicants.

The Visa Code establishes a uniform visa fee to the value of €60. Children under 6 years old are exempt from the fee, whereas the fee for children between 6 and 12 years old amounts to €35. Other groups exempt from the visa fee are school children, students, scholars, and young representatives of non-governmental organisations (due to the academic or business activity they run). A preferential fee to the value of €35 has been retained for citizens of third countries with whom the EU has entered into visa facilitations agreements.

Decisions on visa applications are taken within 15 calendar days since the day the application was lodged. That time limit can only be extended up to 30 or 60 days in individual and well-grounded cases. In terms of the rights of visa applicants, the most significant novelty is providing them with the right to an effective remedy. According to Art. 32 (3) of the Visa Code, applicants who have been denied visas enjoy the right of appeal. Appeals procedure is carried out against a Member State which made the final decision on the application under the national law of this country. In order to ensure equal treatment of visa applicants, the European Commission adopted (on 19 March 2010) guidelines on the processing of visa applications in which it points out that the procedures should be objective and non-discriminatory for the applicants. The EC obliges the Member States to ensure that visa applicants are assisted by interpreters at every stage of the procedure, and are informed of the right of appeal against a negative decision.

Conclusions. The new Visa Code constitutes another step towards the EU Common Visa Policy. By harmonising the application forms and ensuring the right to an effective remedy, the new Visa Code guarantees a greater respect for the rights of visa applicants. It gives the Member States the flexibility in terms of long-term visas. The relations between Poland (as an external border country of the EU) and its eastern neighbours may improve thanks to shorter visa application processing time. The EU Visa Code determines the competence of the Member State in terms of examining visa applications and taking resultant decisions. Poland (which for many people from the east is the country of the first EU border crossing) acquired the competence for examining visa applications. It imposes a vital liability on Poland, particularly on Polish Consulates in the countries of Eastern Europe.