

Memorandum of Understanding

between the European Community and the National Tourism Administration of the People's Republic of China, on visa and related issues concerning tourist groups from the People's Republic of China (ADS)

THE NATIONAL TOURISM ADMINISTRATION OF THE PEOPLE'S REPUBLIC OF CHINA

and

THE EUROPEAN COMMUNITY,

hereinafter referred to as "the Contracting Parties",

DESIRING to facilitate organised group travel from the People's Republic of China to the Community,

CONSCIOUS that such travel will require matters of visa and related issues to be addressed,

CONSIDERING that such travel will contribute to strengthening the tourism sectors in both China and the Community,

DETERMINED to ensure that this Memorandum of Understanding will be applied in strict conformity with the applicable Chinese regulations and the Community's internal market disciplines,

CONSIDERING that the provisions of this Memorandum of Understanding do not apply to the United Kingdom and Ireland, in accordance with the Protocol on the position of the United Kingdom and Ireland, and the Protocol integrating the Schengen acquis into the framework of the European Union, annexed to the Treaty on European Union and the Treaty establishing the European Community,

CONSIDERING that the provisions of this Memorandum of Understanding do not apply to the Kingdom of Denmark, in accordance with the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community,

HAVE AGREED AS FOLLOWS:

SECTION I SUBJECT AND DEFINITIONS

Article 1

Definitions

For the purpose of this Memorandum of Understanding:

- (a) "Member State" shall mean any Member State of the European Community, with the exception of the Kingdom of Denmark, Ireland, and the United Kingdom;
- (b) "Chinese citizen" shall mean any person who holds the passport of the People's Republic of China;
- (c) "territory of the Community" shall mean the territory in which the treaty establishing the European Community is applicable with the exception of the

territory of Denmark, of Ireland, of the United Kingdom and of the French overseas departments;

(d) "Chinese designated travel agency", shall mean any travel agency selected and designated by the National Tourism Administration of the People's Republic of China (CNTA);

(e) "courier" shall mean the person entitled to submit visa applications for a tourist group to the embassies or consular offices of Member States in China according to the procedure established in Article 4 paragraph 2 of this Memorandum of Understanding;

(f) "Schengen Visa" is the uniform visa laid down in Article 10 of the Schengen Application Convention.

Article 2

Purpose and scope of application

This Memorandum of Understanding shall apply to the travel by tourist groups of Chinese citizens at their own expenses from China to the territory of the Community. For this purpose, the Community shall enjoy the status of an approved destination (ADS).

Such travel will be organised in accordance with the provisions and requirements set out in this Memorandum of Understanding.

Article 3

Tourist groups

Participants in Chinese tourist groups shall enter and leave the territory of the Community as a group. They shall travel within the territory of the Community as a group according to the established travel programme. The minimum number of participants in a tourist group should be no less than five.

SECTION II VISA PROCEDURE AND READMISSION

Article 4

Visa procedure

1. Chinese designated travel agencies

(a) The Chinese side shall designate travel agencies in China which have been authorised by the CNTA to operate outbound travel of Chinese citizens to the Member States. The Member States' embassies and consular offices shall accredit these designated travel agencies to act as authorised representatives of the visa applicants. The CNTA will notify to the Commission and the Member States' embassies and consular offices the list of the Chinese designated travel agencies, including their addresses, telephone numbers, fax numbers, emails and contact persons;

(b) in case of any violation of EU and/or Chinese regulations by a Chinese designated travel agency in operating the outbound travel of the Chinese citizens, appropriate measures against such agency in accordance with the legislation in

force will be taken. This includes, where appropriate, the withdrawal of the travel agency's designation by China, or of its accreditation with the Member States' embassies or consular offices in China.

2. Couriers

(a) Each Chinese designated travel agency may appoint up to two persons to act on its behalf and account as couriers in the necessary visa application process for Chinese tourist groups wishing to visit the territory of the Community. The couriers are entitled to submit visa applications for such groups to the embassies or consular offices of Member States in China;

(b) they shall be authorised to enter Member States' embassies or consular offices with a badge issued by CNTA and a photo identity badge and certificate issued by Member States' embassies or consular offices, to which the CNTA shall give relevant details of the persons acting as couriers of each travel agency. The certificate will contain at least the name and address of the travel agency and the name of the agent acting as courier;

(c) in case a designated travel agency is no longer accredited with a Member State's embassy or consular office, the travel agency concerned is obliged to return the badges and certificates to the issuing Member State's embassy or consular office for their subsequent invalidation. Furthermore, an accredited travel agency has the obligation to return the badge and certificate to the issuing Member State's embassy or consular office if the person who was acting as its courier is no longer employed in that capacity with that agency.

3. Visa applications

(a) When lodging visa applications for a group of clients of an accredited Chinese travel agency with the Member States' embassies or consular offices, the travel agencies shall also submit the following documents: a communication signed by the representative of the said travel agency with information on the planned trip, payment of travel costs, adequate insurance, the names of the tour participants, together with each participant's passport and duly completed application forms signed by each traveller. Where necessary, further documents and/or information may be requested by the Member States' embassies or consular offices;

(b) the visa applications will be processed according to applicable legislation. Visas shall in principle be granted by Member States' embassies or consular offices in whose territory the sole or main destination of the foreseen visit is located. Where it is impossible to determine the main destination, or where visits of equal length are foreseen, the Member State's embassy or consular office of the first entry into Community territory shall be in charge of granting the visa. Member States' embassies or consular offices may foresee personal or telephone interviews with applicants;

(c) the visa to be issued by the Member States' embassies or consular offices shall be a Schengen visa, limited to a maximum of 30 days, issued in conformity with applicable legislation. It shall be an individual Schengen visa carrying the reference "ADS";

(d) if the embassies or consular offices of the Community approve visa applications from travel agencies, other organisations or individuals that are not designated travel agencies by CNTA, CNTA shall not be responsible for any problems arising during the subsequent trip in the territory of the Community.

Article 5

Illegal overstay and readmission

1. Chinese designated travel agencies and the participating Community travel agencies are required to report, without delay, to their respective authorities, the CNTA and the competent authority of the Member State having issued the visa, any ADS tourist missing from the group as well as any ADS tourist not having returned to China.

2. In case of any illegal overstay of any ADS tourist, the related travel agencies of the Contracting Parties shall work immediately with the competent departments of the Contracting Parties to help sending back and receiving the tourist, who shall be readmitted by the Government of the People's Republic of China. Documentary evidence shall be provided to prove his or her identity as a Chinese citizen for the purpose of readmission. The airfare shall be borne by the tourist. If the tourist cannot afford it, the costs associated with his or her repatriation have to be borne by the competent authority of the Member State concerned, which will then ask the relevant Chinese designated travel agency to pay back the airfare by receipt. In this case, the related Chinese travel agency shall repay the airfare cost to the competent authority of the Member State concerned within 30 days after the readmission of the tourist and recover the costs from the tourist.

SECTION III IMPLEMENTATION AND INFORMATION EXCHANGE

Article 6

Approved Destination Status Committee

1. In order to ensure the sound operation of this Memorandum of Understanding, the Contracting Parties shall exchange information and data in good time, and work closely together. In order to monitor the correct implementation of the Memorandum of Understanding, a consultative mechanism will be established.

2. To this end, the Contracting Parties shall set up an Approved Destination Status Committee (hereinafter referred to as the Committee) which will, in particular, have the task:

(a) to monitor the application of this Memorandum of Understanding and to draft a report on the implementation of the Memorandum of Understanding every year;

(b) to decide on implementing arrangements necessary for the uniform execution of it;

(c) to have regular exchanges of information;

(d) to recommend amendments to this Memorandum of Understanding to the Contracting Parties.

3. The Committee shall be composed of Representatives of the Contracting Parties. The Community shall be represented by the Commission of the European Communities. China shall be represented by the National Tourism Administration of the People's Republic of China.

4. The Committee shall meet whenever necessary at the request of one of the Contracting Parties.

5. The Committee shall establish its rules of procedure.

SECTION IV FINAL PROVISIONS

Article 7

ADS arrangements of Member States

Any similar Memorandum of Understanding or arrangement between China and a Member State shall no longer be applied as of the entry into force of this Memorandum of Understanding.

Article 8

Entry into force, duration and termination

1. This Memorandum of Understanding shall be ratified or approved by the Contracting Parties in accordance with their respective procedures.

2. This Memorandum of Understanding shall enter into force on the first day of the second month after the date on which the Contracting Parties notify each other that the procedures referred to in the first paragraph have been completed.

3. This Memorandum of Understanding shall remain in force indefinitely, unless terminated in accordance with paragraph 4 of this Article.

4. Each Contracting Party may terminate this Memorandum of Understanding by giving written notice to the other Contracting Party. This Memorandum of Understanding shall cease to apply three months after the date of such notification.

5. This Memorandum of Understanding may be amended by written agreement of the Contracting Parties. Amendments shall enter into force after the Contracting Parties have notified each other of the completion of their internal procedures necessary for this purpose.

6. This Memorandum of Understanding shall be legally binding on the two Contracting Parties.

Hecho en Pekín el doce de febrero de 2004, en dos ejemplares, en lengua alemana, danesa, española, finesa, francesa, griega, inglesa, italiana, neerlandesa, portuguesa, sueca y china, siendo cada uno de estos textos igualmente auténtico./Udfærdiget i Beijing den tolvte februar 2004 i to eksemplarer på dansk, engelsk, finsk, fransk, græsk, italiensk, nederlandsk, portugisisk, spansk, svensk, tysk og kinesisk, idet hver af disse tekster har samme gyldighed./Geschehen zu Peking am zwölften Februar 2004 in zwei Urschriften in dänischer, deutscher, englischer, finnischer, französischer, griechischer, italienischer, niederländischer, portugiesischer, schwedischer, spanischer und chinesischer Sprache, wobei jeder

Wortlaut gleichermaßen verbindlich ist./Έγινε στο Πεκίνο στις δώδεκα Φεβρουαρίου 2004, στην αγγλική, γαλλική, γερμανική, δανική, ελληνική, ισπανική, ιταλική, ολλανδική, πορτογαλική, σουηδική, φινλανδική και κινεζική γλώσσα, και καθένα από τα εν λόγω κείμενα είναι εξίσου αυθεντικό./Done at Beijing on the twelfth day of February 2004, in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Chinese languages, each of these texts being equally authentic./Fait à Pékin le douze février 2004 en deux exemplaires, en langue allemande, anglaise, danoise, espagnole, finnoise, française, grecque, italienne, néerlandaise, portugaise, suédoise et chinoise, chacun de ces textes faisant également foi./Fatto a Pechino addì dodici febbraio 2004, in duplice copia nelle lingue danese, olandese, inglese, finlandese, francese, tedesca, greca, italiana, portoghese, spagnola, svedese e cinese, ciascuna delle quali fa ugualmente fede./Gedaan te Peking, de twaalfde februari 2004, in twee exemplaren opgesteld in de Deense, de Duitse, de Engelse, de Finse, de Franse, de Griekse, de Italiaanse, de Nederlandse, de Portugese, de Spaanse, de Zweedse en de Chinese taal, zijnde alle teksten gelijkelijk authentiek./Feito em Pequim, em doze de Fevereiro de 2004, em duplo exemplar nas línguas alemã, dinamarquesa, espanhola, finlandesa, francesa, grega, inglesa, italiana, neerlandesa, portuguesa, sueca e chinesa, todos os textos fazendo igualmente fé./Tehty Pekingissä kahdentenatoista päivänä helmikuuta 2004 kahtena kappaleena englannin, espanjan, hollannin, italian, kreikan, portugalin, ranskan, ruotsin, saksan, suomen, tanskan ja kiinan kielellä, ja jokainen teksti on yhtä todistusvoimainen./Utfärdat i Peking den tolfte februari 2004 i två exemplar på danska, engelska, finska, franska, grekiska, italienska, nederländska, portugisiska, spanska, svenska, tyska och kinesiska språken, vilka alla texter är lika giltiga.

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Por la Comunidad Europea/For Det Europæiske Fællesskab/Für die Europäische Gemeinschaft/Για την Ευρωπαϊκή Κοινότητα/For the European Community/Pour la Communauté européenne/Per la Comunità europea/Voor de Europese Gemeenschap/Pela Comunidade Europeia/Euroopan yhteisön puolesta/På Europeiska gemenskapens vägnar

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Por la Administración Nacional de Turismo de la República Popular China/For Folkerepublikken Kinas nationale turistadministration/Für die Staatliche Tourismusverwaltung der Volksrepublik China/Για την Εθνική Διοίκηση Τουρισμού της Λαϊκής Δημοκρατίας της Κίνας/For the National Tourism Administration of the People's Republic of China/Par l'administration nationale du tourisme de la République populaire de Chine/Per l'amministrazione nazionale del turismo della Repubblica popolare cinese/Voor de overheidsdienst voor toerisme van de Volksrepubliek China/Pela Administração Nacional de Turismo da República Popular da China/Kiinan kansantasavallan kansallisen matkailuhallinnon puolesta/För Folkrepubliken Kinas nationella turistförvaltning

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ANNEX

PROTOCOL ON THE NEW MEMBER STATES

In accordance with the Act of Accession, the Member States acceding to the European Union on 1 May 2004 (Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, and Slovakia) do not yet issue Schengen visas.

Therefore, by derogation from Article 4(3) of the Memorandum of Understanding, and until the Council Decision foreseen in Article 3(2) of the Act of Accession takes effect, the Member State concerned shall issue national visas limited to its own territory.

JOINT DECLARATION ON IMPLEMENTATION ARRANGEMENTS

1. Travel agencies

The Community recommends Member States and their tourism service providers to furnish to CNTA a list of the travel agencies in their territory, including their addresses, telephone numbers, fax numbers, emails and contact persons. These lists should be updated regularly and transmitted to CNTA.

The Contracting Parties furthermore understand that both Contracting Parties' travel agencies shall be entitled to select their own business partners from the other Contracting Party and conclude contracts with them. The said travel agencies are responsible for all business arrangements covering the tour such as the tour programmes, costs, services, and payments in the tour contract with their respective business partners.

2. Protection of Chinese tourist rights

The legitimate rights and interests of the Chinese citizens travelling to the territory of the Community in tourist groups shall be protected by the pertinent legislations of the Community, Member States and China. In case of violation, those regulations shall be applied to the relevant agencies.

The Community encourages the Member States and their tourism service providers to set up hotlines for consultation and emergency assistance to Chinese tourists.

3. Tour leaders and tour guides

The Contracting Parties understand that accredited Chinese travel agencies shall appoint a tour leader or tour leaders for each group.

The tour leader shall ensure that Chinese tourist groups travelling to the territory of the Community in accordance with this Memorandum of Understanding enter and leave the territory of the Community as a group. The tour leader will be required to carry copies of all tickets and passports throughout the trip.

The Contracting Parties take note that, in addition to the obligatory tour leader provided by the Chinese travel agencies, Community travel agencies may provide tour guides for each Chinese tourist group for the duration of the stay on the territory of the Community.

These tour guides may accompany the group from the time it enters to the time it leaves the territory of the Community, on the conditions provided by the law applicable in each Member State, and endeavour to solve any problems that may arise in consultation with the Chinese tour leader.

4. Information requirements

The Community encourages the Member States and their tourism service providers to make relevant information available to the Chinese designated travel agencies, in particular regarding travel possibilities to and within the territory of the Community, important travel services for Chinese travellers and their prices and information which serves to protect the travellers' legitimate rights.

5. Documentary evidence

The Contracting Parties agree that documentary evidence referred to in Article 5(2) of this Memorandum of Understanding, shall include passports, visa applications, EU immigration control records, travel agency documents, or photocopies thereof.

JOINT DECLARATION CONCERNING DENMARK

The Contracting Parties take note that this Memorandum of Understanding does not apply to the territory of the Kingdom of Denmark. In such circumstances the National Tourism Administration of the People's Republic of China and the authorities of Denmark state their willingness to conclude, without delay, an Approved Destination Status arrangement in the same terms as this Memorandum of Understanding.

JOINT DECLARATION CONCERNING THE UNITED KINGDOM AND IRELAND

The Contracting Parties take note that this Memorandum of Understanding does not apply to the territory of the United Kingdom and Ireland. In such circumstances it is desirable that the National Tourism Administration of the People's Republic of China and the authorities of the United Kingdom and of Ireland conclude an Approved Destination Status arrangement in similar terms as this Memorandum of Understanding.

JOINT DECLARATION CONCERNING ICELAND AND NORWAY

The Contracting Parties take note of the close relationship between the European Community and Iceland and Norway, particularly by virtue of the Agreement of 18 May 1999 concerning the association of these countries with the implementation, application and development of the Schengen acquis. In such circumstances it is appropriate that the National Tourism Administration of the People's Republic of China concludes an Approved Destination Status arrangement with Iceland and Norway in similar terms as this Memorandum of Understanding.