

This manual will enter into force on 1 January 2013.

## **Manual on sanctions related to ADS**

The procedure with regards to sanctions related to ADS is based on a number of documents. The most important **documents** are:

1. The ADS Memorandum of Understanding (MoU) of 1 May 2004
2. The Commission Recommendation for Implementation of the MoU of 16 September 2004
3. Report by Heads of Mission (HoMs) in Beijing on consular cooperation concerning the ADS MoU between the EU and CNTA 21 June 2005
4. Heads of Mission Non-Paper of September 2005 on the implementation of the ADS MoU
5. Report by Deputy Heads of Missions (DHoMs) in Beijing on the ADS Sanction Manual 28 June 2011

These rules do not limit the adoption of additional requirements by embassies that may deem this appropriate.

According to the *Commission Non-Paper 2005 on the implementation of the ADS MoU*:

### **BASIC RULES IN THE FRAMEWORK OF THE ADS MoU**

A Chinese travel agency has to be accredited by both CNTA and the Schengen countries to be able to submit ADS visa applications.

Only a courier of an accredited travel agency who holds a valid white badge can submit ADS visa applications. A copy of the white badge should be submitted with the ADS visa applications.

Chinese accredited travel agencies should in principle work with a European travel agency to provide the best possible service to the tour group in terms of travel planning. It is the responsibility of the accredited Chinese travel agency to choose their business partners and ensure the accuracy of information provided.

Visa application and passports have to be signed by the visa applicant himself/ herself. This is a requirement of the EU Visa Code. Applications and passports not signed cannot be processed by the visa sections.

Any changes to the submitted itinerary, as well as changes to the composition of the tour group should be communicated to the issuing visa section within 24 hours either by email, telephone or fax.

If a minor is travelling with only one parent, consent by the other parent has to be provided in accordance with Chinese law and as outlined in the list of supporting documents<sup>1</sup>.

This also applies if the visa has already been received and initially both parents intended to travel. In that case, the consent should be communicated to the issuing visa section without delay. Tour groups have to be accompanied by a tour leader (certified by CNTA) at all times, from the meeting of the group at the check-in desk in China until the group has returned to China and has passed the Immigration desks in China.<sup>2</sup>

Couriers holding white badges are encouraged to renew their badge well ahead of expiry to avoid disruption of their activities.

White badges issued by consulates not part of the MoU between the European Commission and CNTA (DK, NOR, ICE) issue their own white badges that cannot be used for the application at other consulates.

Accredited Travel Agencies can hold up to two white badges. However, consulates reserve the right to revoke badges, should when the travel agent fails to provide a tour group within six months of issuance.

Basic provisions regarding sanctions to be imposed to Accredited Travel Agencies are contained both in the text of the **ADS MoU** itself as well as in the **Commission Recommendation adopted on 16 September 2004**<sup>3</sup>:

a) **Article 4. 1(b)** of the **ADS MoU** provides that *“in case of any violation of the 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”*.

b) In order to facilitate the effective and harmonised implementation of the ADS MoU between EU Member States, the **Commission**, in its **Recommendation**, advises Member States’ consular offices in China to withdraw the accreditation of a Chinese travel agency *“in case of a breach of the EU and/ or Chinese regulations, in particular in case of facilitation of illegal immigration” (point 3)*. It provides further that *“the withdrawal imposed by a consular office of a Member State has immediate effect for all Member States”*. In order to ensure the uniform application by all Member States of the sanctions imposed, the consular office should **notify** the EU Delegation in Beijing and the other Member States consular offices in their respective area and their own embassy's of the **withdrawal** immediately. A specific reference is made to the possibility that *“ in appropriate circumstances, the withdrawal of accreditation can be reviewed, if for instance the accredited travel agency proves that the violation of the EU and/or Chinese regulations was limited to one of its employees who no longer works for the Agency”*.

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<sup>1</sup> The Lists of Supporting Documents for travel to Schengen can be found here:  
[http://eeas.europa.eu/delegations/china/travel\\_to\\_eu/visa/index\\_en.htm](http://eeas.europa.eu/delegations/china/travel_to_eu/visa/index_en.htm)

<sup>2</sup> Joint Declaration on Implementation Arrangements, L83/20, 20.03.2004

<sup>3</sup> Commission Recommendation of 16 September 2004 on the implementation by the Consular offices of the Member States of the 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) OJ.L 296/23 of 21.9.2004.

In addition, the **Recommendation** provides that Member States consular offices in China “*can address warnings to the accredited travel agencies in case they suspect the agency is involved in minor violations*”. In this case, local Member States' consular offices, the consular office's Embassy and the **EU Delegation** should **be informed** immediately.

The **EU Delegation** shall **inform CNTA** of any withdrawals and warnings addressed to accredited travel agencies.

As stated in the *Report by HoMs in Beijing on consular cooperation concerning ADS MoU between EC and CNTA*<sup>4</sup>:

## **1. Procedures on sanctions imposed on Chinese travel agencies**

Chinese Accredited Travel Agencies are considered, a priori, to be of good faith. A **system of collective penalties** agreed by the Member States has been put in place and is updated on a regular basis (see **Annex 3**).

Sanction proposals should be communicated in a standard format (see **Annex 4**).

The procedure for the proposal of sanctions imposed on Chinese travel agencies is as follows:

1. All **ADS sanction proposals** (see **Annex 1**) are sent from the proposing Consular Office to the EU Delegation, the MS's respective embassy in Beijing for information and the other Member States' consular offices in the respective constituency.
2. Current proposals will be **distributed weekly** by the **EU Delegation** to all embassies<sup>5</sup> and will be accessible on CIRCA<sup>6</sup>.
3. There will be a silence procedure<sup>7</sup> of 5 working days, following the day the sanction has been communicated by the EU Delegation. If no objections are raised by Member States, a collective sanction will take effect thereafter.
4. The sanction will be valid from the date the silence procedure has been concluded.  
Applications made by the respective Chinese travel agencies before or during the silence procedure may be processed at the discretion of the individual Member States' consular offices.

Information on **sanctions imposed** (see **Annex 2**) will be distributed to all Member States embassies by the **EU Delegation**.

For transparency, the Sanction Manual is published on the EU Delegation website.<sup>8</sup>

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<sup>4</sup> The report by HoMs in Beijing was written on 21 June 2005

<sup>5</sup> Embassies are responsible for ensuring the dissemination of information to their local consular offices

<sup>6</sup> The CIRCA website is a secure technical platform provided by the Commission services. CIRCA>China Consular Network – Local Schengen Cooperation on Visas/ EU-China ADS Agreement>Library>ADS>TA Lists and Sanction Lists>Sanction Proposals

<sup>7</sup> Silence signifies acquiescence.

<sup>8</sup> Embassies are responsible for providing a link from their website to the EU Delegation website.

**CNTA** should be notified immediately **by the EU Delegation** when collective **sanctions are imposed**.

The Member State Embassy/ consular office initiating the sanction informs the travel agency once the silence procedure has been concluded. Following the provision of the MoU, the MS that issued the white badge should ensure that those are returned.

### **1.1 Arbitration procedure:**

1. In the event of one or more embassies **objecting** to a proposed sanction, a sanction objection report (see **Annex 5**) should be filled in by those Member States and sent via email to the EU Delegation.
2. When the silence procedure has been completed and there is a significant number of objections to the proposed sanction, the lower sanction proposal will be accepted. If deemed necessary, the EU Delegation will convene an **ADS sanction working group** with those MS concerned. This arbitration process will last for a maximum of 5 working days from the date of the first objection. The conclusions will be circulated to all MS.
3. In the case of an objection to a proposed indefinite withdrawal of a travel agency's white badge the ADS sanction working group will convene and function as an "arbitration committee" to discuss the sanction. The conclusions will be circulated to Member States.

**Member States** who still object to a collective sanction at the end of the above-mentioned procedure have the **discretion of not imposing a sanction** or to impose a lesser sanction. This will be considered on a case by case basis. In that situation, they have the obligation to notify the other Members States and the EU Delegation.

If a travel agency is under an individual Member State's sanction, and for as long as that sanction remains in effect, other Member States shall not accept ADS visa applications from this agency when the ADS group's itinerary includes the national territory of the State that has imposed the sanction.

In the event that the Agreement is breached by an agency and it is not covered by the agreed framework (as described in the attached table), the Embassy who has identified the breach may follow the same procedure (a silence procedure of 5 working days) and, in addition, propose to the group the sanction it considers appropriate.

## **2. Harmonisation of requirements concerning ADS sanctions**

The **Commission recommendation** adopted in *September 2004* states that "*Member States should apply common harmonised sanctions in case of violation by the Chinese Accredited Travel Agency of the Community rules, in compliance with the rules of the CCI on visa applications processed by private administrative agencies, travel agencies and package tour operators*".

### **2.1 Coordination between Beijing and all Consular Offices in China**

Beijing is the central point for cooperation between the EU Missions in China. To guarantee a uniform application of sanctions, consular offices have to **follow rules established by the HoMs** in Beijing. As mentioned in section 1, each Embassy should regularly inform its respective consular offices regarding the sanctioned tour

operators.<sup>9</sup> On badge issuance, the EU Delegation is ready to reply directly to any provincial consulate but will copy every correspondence to the respective Embassy in Beijing, unless instructed otherwise by the Embassy. Sanction proposals by a Consulate should immediately be communicated to all Member States in the same constituency, to its Embassy in Beijing and to the EU Delegation. The EU Delegation distributes this information on a weekly basis to other Member States embassies, who will redistribute it to their respective provincial consular offices.

## **2.2 Interaction on sanctions with Non-EU Schengen countries, Non-Schengen EU countries and Non-EU countries (USA, UK, Canada, New Zealand and Australia)**

As commonly agreed in the Visa/ADS Sub-Group Meeting on 6 October 2006<sup>10</sup>, although legally not binding, it is advisable to follow the sanctions imposed by Norway, Denmark, Switzerland and Iceland on travel agencies. Norway, Denmark, Switzerland and Iceland circulate sanction reports to Schengen countries and this practice should be reciprocated. In the Visa/ ADS Sub-Group meeting on 7 December 2006<sup>11</sup> EU Schengen countries agreed with the UK and Ireland on the same arrangements. Consequently sanction proposals by Norway, Denmark, Iceland, Switzerland, UK and Ireland are integrated in both Tables (2) and (3).

During ADS Sub-Group meeting on 5 March 2011<sup>12</sup>, the proposal by the UK to exchange information on sanctions with the following countries was accepted: USA, UK, Canada, New Zealand and Australia. The sanctions will be added to Tables (2) and (3), and are for information purposes only.

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<sup>9</sup> Additionally, the respective local Presidencies in Shanghai and Guangzhou are copied into general ADS emails.

<sup>10</sup> See minutes distributed by Finnish Presidency of the Visa/Sub-Group Meeting on 6 October 2006 in Beijing

<sup>11</sup> See minutes distributed by EC Delegation of the Special Meeting of ADS Subgroup on Sanctions 7 December 2006, EC Delegation to China, Beijing

<sup>12</sup> See minutes distributed by the EU Delegation on 8 March 2011

**Annex 1: Information sharing: Sanctions Proposals (Table 2); distributed by the EU**

Accredited Chinese List Number	Travel Service (designation)	Permit No. (Business Licence)	Reason for Sanction	Sanction (type)	By (MS)	Date of (sanction proposal)

**Annex 2: Sanctions Table (Table 3); distributed by the EU**

Accredited Chinese List Number	Travel Service (designation)	Permit No. (Business Licence)	Sanction type	Initiated by	Date of proposal	End Date

**Annex 3: Sanctions Scheme**

<b>Warning</b>
<ul style="list-style-type: none"> <li>· Poor handling of files;</li> <li>· 1 failure to report (within 48 hours) cases of tourists overstaying; Signatures provided are not by applicant themselves</li> <li>· Failure of tour leader to carry his CNTA certification with him during the tour</li> </ul>

<b>Temporary withdrawal for 3 months</b>
<ul style="list-style-type: none"> <li>· Failure to detect false declarations by Chinese companies and applicants;</li> <li>· Failure to immediately report changes to the itinerary (changing length of stay within a country);</li> <li>· 2 failures to report (within 48 hours) cases of tourists overstaying (within a consecutive 365-day period);</li> <li>· Failure of tour leader to accompany the group according to the MoU;</li> <li>· Failure to immediately report changes in accompanying tour leader;</li> <li>· Following 2 warnings; Signature of applicant has been forged (eg. on application form, passport).</li> <li>· Failure to detect false documents (such as hotel reservations, flight reservations, hukou)</li> </ul>

<b>Temporary withdrawal for 6 months</b>
<ul style="list-style-type: none"> <li>· 3 failures to report (within 48 hours) cases of tourists overstaying (within a consecutive 365-day period);</li> </ul>

· A travel agency sub-contracting with/ being sub-contracted by sanctioned and banned travel agencies;<sup>13</sup>  
Failure to detect forged CNTA tour guide certification.

#### **Temporary withdrawal for 1 year**

· Failure to detect false documents (passports, previous visa stickers);  
Encouragement of applicants/ companies by travel agency to sign false statements relating to visa application  
· 4 failures to report (within 48 hours) cases of tourists overstaying (within a consecutive 365-day period);

#### **Indefinite withdrawal**

· The travel agency has been found to be actively facilitating or attempting to facilitate illegal immigration to the EU ( including presentation of false airport stamps, false boarding passes,...);  
· Failure to immediately report the overstay of an entire group;  
· Attempted bribery of visa officers;· Clear case of non-cooperation with EU consular staff despite several well-documented requests.<sup>14</sup>

NB: Cases of indefinite withdrawal can be reviewed by the working group.

### **Annex 4: Sanctions Proposal Report**

#### **Sanctions Proposal Report – MS ISO Code/YY/NN**

##### **1. Agency Details**

CNTA list number:  
Name (English/ Chinese):  
Address:  
Permit No. (Business Licence):

##### **2. Succinct description of the case**

- (summary: max. 2 lines for describing main facts/issues justifying proposal)
- (background information on the group, itinerary and counterpart agency in the EU)
- (when did the facts occur, or when were they discovered or reported, by whom)
- (what happened)

##### **3. Sanction proposed**

<sup>13</sup> Agreed upon in Special Meeting of ADS Subgroup on Sanctions 7 December 2006, EC Delegation to China, Beijing

<sup>14</sup> Agreed upon in Special Meeting of ADS Subgroup on Sanctions 7 December 2006, EC Delegation to China, Beijing.

(date and type)

**4. Contact person for further explanation**

**5. Report signed by (member of Embassy)**

Beijing,

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## **Annex 5: Sanctions Objection Report**

### **Sanctions Objection Report**

**1. Agency Details:**

CNTA list number:

Name (English/Chinese):

Permit No. (Business Licence):

**2. Sanction proposed by whom and when:**

**3. Details of why sanction is opposed:**

Justification:

**4. Details of alternative sanction proposal:**

Type:

Justification:

**5. Contact person for further explanation:**

**6. Report signed by (member of Embassy)**



## **Annex 6: Appeal Form**

### **Appeal Form**

#### **1. Agency Details:**

CNTA list number:

Name (English/Chinese):

Permit No. (Business Licence):

#### **2. Tour leader:**

Name (English/Chinese)

Badge No.

#### **3. Sanction proposed by whom and when:**

#### **4. Details of the sanction:**

#### **5. Reasons for the appeal:**

Facts

Sanction

Both

#### **6. Justification for the appeal:**

#### **7. Alternative solution proposedsanction proposal Type:**

**Justification:**

#### **8. Contact person for further explanation:**

#### **9. Signature**

## Annex 7: Common Procedure of issuing a white badge

Chinese travel agencies should apply for white badges at the embassy/ consulate where they intend to submit the most applicants for the following 12 months.

The following documents are required for the application of a white badge:

- Business license registration of the Chinese travel agency (including license number) with stamp, original and one copy;
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- Yellow badge received from CNTA for Schengen ADS tourism, original and one copy;
- A letter outlining the expectations of the travel agency in terms of number of applicants that will require an ADS visa from this Schengen country in the next 12 months, signed by the head of company;
- A document detailing the travel agency's activity and number of tourists successfully sent to Schengen during the past 12 months;
- Information sheet with relevant contact details of the travel agency (representatives' names and mobile numbers, couriers names and mobile numbers);
- Courier's passport or ID card, original and one copy;
- 2 passport photographs

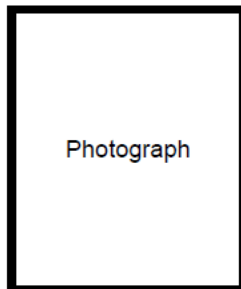
At the time of issuance of the white badge, the courier will also receive a copy of the sanction manual in both English and Chinese, as well as the harmonised list of supporting documents. It is his/ her responsibility to pass this copy on to the travel agency for their information and use.

### Template White badge and Official ADS Courier Certificate

<b>OFFICIAL ADS (EUROPEAN UNION) COURIER</b> <b><u>Issuing country and city, e.g. IT GZ</u></b>	
Photograph	Name _____
	ID Card : _____
	Travel Agency: _____
	Expiry Date: _____
<p>Information about the ADS Memorandum of Understanding between the EU and China, the Lists of Supporting Documents and the sanctions that apply for mismanagement by travel agencies can be found here: <a href="http://eeas.europa.eu/delegations/china/documents/travel_to_eu/ads_sanction_manual_final_en.pdf">http://eeas.europa.eu/delegations/china/documents/travel_to_eu/ads_sanction_manual_final_en.pdf</a></p>	



**OFFICIAL ADS (EUROPEAN UNION) COURIER**  
**CERTIFICATE (No. country & city)**



**Name:** \_\_\_\_\_

**ID Card No.:** \_\_\_\_\_

**Travel Agency:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Certificate Issued By:** \_\_\_\_\_

**Expiry Date:** \_\_\_\_\_

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

Article 4: Visa Procedure – 4.2. Couriers

1. Each Chinese designated travel agency may appoint up to two persons to act on their behalf and account as couriers in the necessary visa application process for Chinese tourists 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;
  2. They shall be authorized 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;
  3. In Case a designated travel agency is no longer accredited with a Member States' embassy or consular office, the travel agency concerned is obliged to return the badges and certificates to the issuing Member States' 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 States embassy or consular office if the person who was acting as its courier is no longer employed in that capacity with that agency.
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