



EUROPEAN COMMISSION

Brussels, 29.10.2010
SEC(2010) 1285 final/2

DECLASSIFIED PART

RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

in order to authorise the Commission to open negotiations for the conclusion of an Agreement between the European Union and Ukraine, amending the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas

Declassified part on 28.11.2017

EXPLANATORY MEMORANDUM

1. INTRODUCTION

1.1. General background

The Visa Facilitation Agreement between the European Union and Ukraine¹ has been in force since 1 January 2008, together with the Readmission Agreement between the Parties². Since then, the EU and Ukraine have further developed their cooperation in the field of freedom, security and justice, in particular through annual EU-Ukraine Ministerial Meetings on Justice, Freedom and Security and annual meetings of the EU-Ukraine JLS Subcommittee. Since October 2008, the EU and Ukraine have moreover pursued an examination of the conditions for visa-free travel of Ukrainian citizens to the EU as a long-term goal.

Article 12 of the Visa Facilitation Agreement establishes a Joint Committee tasked *inter alia* with monitoring the implementation of the Agreement and suggesting amendments and additions thereto. At its 4th meeting on 25 November 2009, the Joint Committee examined possible amendments to the Agreement, taking into account the result of the monitoring of the implementation of the Agreement by the Joint Committee, the Commission services' evaluation of the implementation of the European Union's visa facilitation agreements with third countries³, Ukraine's proposals to amend the Agreement as well as legislative changes to the European Union's *acquis* on visas, namely the Visa Code⁴ applicable since 5 April 2010.

¹ Agreement between the European Community and Ukraine on the facilitation of the issuance of visas, OJ L 332/68, 18.12.2007.

² Agreement between the European Community and Ukraine on the readmission of persons, OJ L 332/48, 18.12.2007.

³ SEC(2009) 1401 final, 15.10.2009

⁴ 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), OJ L 243/1, 15.9.2009.

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At political level, at the 8th EU-Ukraine Ministerial Meeting on Justice, Freedom and Security on 9 June 2010, the Parties looked forward to constructive negotiations on possible amendments to the Visa Facilitation Agreement. An improved and expanded Visa Facilitation

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Agreement would also represent a significant yet gradual step towards the longer-term goal of a visa-free travel regime for Ukrainian citizens.

The present recommendation to the Council in order to authorise the Commission to open negotiations with Ukraine on an Agreement amending the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas aims at responding to the commitments expressed at political level and is based on the abovementioned draft suggestions of the Joint Committee.

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2. PURPOSE AND LEGAL BASIS

This recommendation has been submitted to the Council in order to conclude an Agreement with Ukraine amending the existing Visa Facilitation Agreement between the European Union and Ukraine, that contains additional clear and unambiguous legally binding rights and obligations necessary to further improve the facilitated issuance of visas.

Like the existing Agreement, the subject matter of the new Agreement is related to the issuance of visas for an intended stay of no more than three months, which falls under Union competence and is regulated by Article 77(2)(a) of Title V of the Treaty on the Functioning of the European Union, which is the basis for the establishment of legislation concerning, *inter alia*, procedures and conditions for issuing visas by the Member States.

In accordance with the requirements of Article 4(3) of the Treaty on European Union, Member States bound by these negotiation directives refrain from negotiating bilaterally with Ukraine on the subject matters covered by these directives. In cases where such bilateral negotiations are already ongoing, Member States suspend these as long as the Union has not concluded its negotiations with Ukraine.

The existing Agreement does not bind the United Kingdom, Ireland and Denmark or Norway, Iceland and Switzerland, the countries associated to the development of the Schengen *acquis*.

However, in order to ensure a common approach towards Ukraine on the issue of facilitation of issuance of short-stay visas, covering all Member States and the countries associated with the implementation and further development of the Schengen *acquis*, Joint Declarations attached to the Agreement state the desirability that similar Agreements on visa facilitation be concluded between Ukraine and each of these Member States and associated countries.¹⁶ As the new Agreement will not bind these countries either, it would therefore be appropriate to provide similar Joint Declarations.

3. APPLICABILITY TO THE MEMBER STATES THAT DO NOT FULLY APPLY THE SCHENGEN ACQUIS

Cyprus, Bulgaria and Romania do not issue Schengen visas yet. Until the Council Decisions provided for in their respective Acts of Accession have been taken, each of these Member States continues to issue national visas, the validity of which is limited to its own territory. Nevertheless, like the existing Agreement, the new Agreement will bind these Member States, even if, for a transitional period, the visas to be issued by their authorities, will be national visas with limited territorial validity.

RECOMMENDATION

¹⁶ Denmark and Switzerland concluded such bilateral visa facilitation agreements with Ukraine.

In light of the above considerations, the Commission recommends:

- that the Council authorises the Commission to negotiate with Ukraine with a view to concluding an Agreement amending the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas;
- that, since in accordance with the Treaty, the Commission will conduct these negotiations on behalf of the European Union, the Council appoints a special Committee to assist it in its task, and;
- that the Council issues the appended negotiating directives.

Declassified part on 28.11.2011

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