



EUROPEAN COMMISSION

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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 Azerbaijan on the facilitation of the issuance of short-stay visas

EXPLANATORY MEMORANDUM

1. INTRODUCTION

1.1. General background

Azerbaijan and the EU established contractual relations in 1996 through a Partnership and Cooperation Agreement (PCA) which entered into force in 1999. On this basis, the EU-Azerbaijan European Neighbourhood Policy (ENP) Action Plan was approved by both parties in November 2006 for a period of five years. The ENP Action Plan highlights ten key priority areas covering political, economic, security and sectorial subjects.

Following the launch of the Eastern Partnership (EaP) in May 2009, EU-Azerbaijani relations are being strengthened through the bilateral and the multilateral tracks of the EaP. Within the bilateral track the EU is negotiating an Association Agreement since July 2010 which aims to further strengthen the political association and advance gradually the economic integration of Azerbaijan into the EU. The possibility to enter into a Deep and Comprehensive Free Trade Area (DCFTA) with the EU is open to all partners of the EaP. However, preparations for such negotiations are currently not foreseen in the case of Azerbaijan as it is not a WTO member.

While negotiations on the new Association Agreement are progressing, the implementation of the existing PCA continues. In 2010 Azerbaijan and the EU agreed to establish two additional subcommittees within the PCA leading to the existence of four subcommittees that meet at the level of experts on an annual basis. The current subcommittees are: Subcommittee on Trade, Economic and related legal issues; Subcommittee on Energy, Transport and Environment; Subcommittee on Justice, Freedom, Security and Human Rights and Democracy; and, Subcommittee on Employment and Social Affairs, Public Health, Training, Education and Youth, Culture, Information Society and Audiovisual Policy, and Science and Technology.

In the field of energy, cooperation is based on the Memorandum of Understanding on a strategic partnership between the European Union and Azerbaijan in the field of energy which was signed in 2006.

Within the framework of the strengthening of the bilateral relations between EU-Azerbaijan as well as the EU relations with all the EaP countries, the EU recognised the importance of enhanced people-to-people contacts as a horizontal issue for further improvement. In this context, in the Prague Eastern Partnership Summit in May 2009, the EU reaffirmed its political support towards full liberalisation of the visa regime in a secure environment and took the commitment to promote the mobility of their citizens through visa facilitation and readmission agreements. More recently in December 2010, the EaP Foreign Minister's meeting emphasized the importance of easier mobility of certain categories of people such as students, researchers, academics or business operators.

For the European Union, visa facilitation agreements represent an instrument in the framework of the European short-stay visa policy: in the Hague Programme of November 2004, the Council and the Commission were invited to examine with a view to developing a common approach, "whether in the context of the EC readmission policy it would be

opportune to facilitate, on a case by case basis, the issuance of short-stay visas to third-country nationals, where possible on the basis of reciprocity, as part of a real partnership in external relations, including migration-related issues". In December 2005, at the level of COREPER, Member States agreed on a common approach for the development of EU policy on visa facilitation and identified key elements to be taken into account when deciding to open negotiations on visa facilitation with third countries.

To date, the EU has concluded visa facilitation Agreements –in parallel with readmission agreements- with Russia, Ukraine, the Republic of Moldova, the Western Balkan countries and Georgia.

In October 2009 the Commission services presented an evaluation of the implementation of the existing visa facilitation agreements. In the Stockholm Programme of December 2009, the Commission and Council are invited "to continue to explore the possibilities created by the conclusion of visa facilitation agreements with third countries in appropriate cases". More recently the Council gave to the Commission mandates to negotiate visa facilitation Agreements with Cape Verde and Belarus.

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Currently all EU Schengen States except Slovakia have consular presence or representation arrangements in Baku.

The present recommendation to the Council in order to authorise the Commission to open negotiations with Azerbaijan on the facilitation of the issuance of short-stay visas aims at responding to the political Commitment taken by the EU for the EaP countries.

1.2. Azerbaijan's visa policy towards EU citizens

Azerbaijan amended in September 2010 its short stay visa policy towards third country nationals. According to the new rules, Azerbaijan issues three categories of visas : diplomatic and service visas for official visits and ordinary visas for all other purposes. Azerbaijan issues

transit visas (for a maximum period of 5 days) and entry visa which can be ordinary entry visa (one entry) or multiple entry visa with a validity up to 2 years. The Azeri visa can be issued by the Consular posts of Azerbaijan abroad and at the International airports of Azerbaijan.

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2. PURPOSE AND LEGAL BASIS

This recommendation is submitted to the Council in order to authorise the Commission to negotiate with Azerbaijan an Agreement that contains, on the basis of reciprocity, clear and

unambiguous legally binding rights and obligations to ensure simplified visa issuing procedures for citizens of Azerbaijan and the EU.

The subject matter of the 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.

The EU has already exercised its competence in this field and has established rules in this respect in particular by adopting the Visa Code in July 2009 which defines the procedures and conditions for issuing visas for transit and stays in the territory of the Member States which do not exceed three months in any six-month period.

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 Azerbaijan 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 Azerbaijan.

The present proposal is building upon the Schengen acquis in the field of visa policy and thus implies the variable situation as laid down by the protocols on the position of the United Kingdom, Ireland and Denmark. The situation of Norway, Iceland and Switzerland, countries associated to the development of the Schengen acquis, shall also be taken into account, as well as the future association of Liechtenstein to the development of such acquis.

The Union has no power to conclude an Agreement with Azerbaijan on the facilitation of the issuance of short-stay visas in a manner that binds these Member States and associated countries. However, in order to ensure a common approach towards Azerbaijan 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, it would be appropriate that Joint Declarations state the desirability that similar Agreements on visa facilitation be concluded between Azerbaijan and each of these Member States and associated countries or future associated countries.

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

Cyprus, that joined the European Union on 1 May 2004, and Bulgaria and Romania, that joined the European Union on 1 January 2007, do not issue Schengen visas yet. Until the Council Decision provided for in Article 3(2) of the Act of Accession regarding Cyprus and Article 4(2) of the Act of Accession regarding Bulgaria and Romania is adopted, each of these Member States continues to issue national visas, the validity of which is limited to its own territory.

However, even if provisions of the Schengen acquis on the issuance of uniform visas are not yet applied by these Member States pending the Council decision, they are nevertheless binding on them from the date of accession.

Therefore, Cyprus and Bulgaria and Romania participate, as from 1 May 2004 and 1 January 2007 respectively, in the adoption by the Council and the European Parliament of all measures building upon the Schengen acquis, including those whose full application will be subject to a Council decision pursuant to Article 3(2) of the Act of Accession regarding Cyprus and Article 4(2) of the Act of Accession regarding Bulgaria and Romania.

Moreover, as a further consequence of the fact that the European Union has internal rules in place in the fields covered by the envisaged visa facilitation Agreement, which are binding on Cyprus, Bulgaria and Romania, the European Union is competent to exercise its external powers in these fields also with the effect of binding 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.

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RECOMMENDATION

In light of the above considerations, the Commission recommends:

- that the Council authorise the Commission to negotiate with Azerbaijan with a view to concluding a bilateral Agreement on the facilitation of the issuance of short-stay visas;
- that, since in accordance with the Treaty, the Commission will conduct these negotiations on behalf of the European Union, the Council appoint a special Committee to assist it in its task, and;
- that the Council issue the appended negotiating directives.

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