



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.9.2008
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EU RESTRICTED

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 Community and Georgia on facilitation of issuance of short-stay visas

EXPLANATORY MEMORANDUM

1. INTRODUCTION

1.1. General background

For the European Community, visa facilitation Agreements represent a new instrument in the framework of the European short-stay visa policy: in the **Hague Programme**, the Council and the Commission are 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 and on a basis of reciprocity, as part of a real partnership in external relations, including migration-related issues”. Till now the EU has developed and used this instrument in its relations with Russia, Ukraine, the Republic of Moldova and the Western Balkan countries.

In December 2005, at the level of COREPER, Member States agreed on a common approach for the development of the EU policy on visa facilitation and identified key elements to be taken into account when deciding to open negotiations on visa facilitations with third countries.

1.2. External Context

The contractual relationship between the European Community and its Member States, and Georgia is currently provided by the 1999 Partnership and Cooperation Agreement (PCA). The EU-Georgia political and technical dialogue is carried out through meetings that take place regularly.

The EU-Georgia Cooperation Council meeting of 14 November 2006 adopted a recommendation on the implementation of a European Neighborhood Policy (ENP) Action Plan. As indicated in this recommendation, the Action Plan sets out concrete steps in bringing forward the fulfilment of the Parties’ obligations set out in the PCA, and provides a broader framework for promoting a much closer economic and regulatory integration of EU-Georgia relations over a period of five years.

The EU-Georgia ENP Action Plan includes several objectives related to the area of Justice, Freedom and Security, in particular under "Priority area 4" and under point 4.3 of the "General Objectives and Actions" chapter, i.e. border management, fight against organised crime, reform of the judiciary, fight against corruption and police and judicial cooperation. Moreover, the Action Plan also provides for an enhanced EU-Georgia dialogue on migration issues, including, inter alia, readmission and visas issues.

In June 2007, the possible impact on Georgia of the EC-Russia visa facilitation Agreement was raised and Georgia has formally stated its willingness to negotiate and conclude an EC-Georgia visa facilitation Agreement in parallel with an EC-Georgia readmission agreement. In particular, Georgia considered the EC-Russia visa facilitation Agreement detrimental for regaining its full territorial integrity through a peaceful settlement of conflicts in Abkhazia and South Ossetia, as Georgians with Russian passport that live in these breakaway regions could indirectly benefit of simplified travel access conditions to the EU.

During the June 2007 COREPER discussions, it was agreed to follow the package approach proposed by the Commission, i.e. swiftly setting up the JLS Subcommittee with Georgia and on enhanced dialogue on migration.

Georgia is the only country in the South Caucasus for which the ENP Action Plan provides for a Justice, Freedom and Security Subcommittee, with a view to establish an appropriate institutional framework for developing this dialogue and for carrying out a regular implementation of JLS related objectives included in the Action Plan. The first Subcommittee's meeting was held in Brussels on 30 April 2008. A Workshop on mobility issues was organized in Tbilisi on 25 June 2008.

It is also to be noted that the Council adopted on 5 June 2008 conclusions in which it invited the EC to open a dialogue with Georgia with a view to launching a Mobility Partnership. Currently in a pilot phase, Mobility Partnerships constitute a new framework for a comprehensive dialogue and balanced cooperation between the EU and selected third countries, gathering in a coordinated and reciprocal effort, national, Community and third countries initiatives. As such, the Mobility Partnerships form part of the EU's Global Approach to Migration.

At a political level, following the August 2008 conflict in Georgia, the Extraordinary European Council held in Brussels on 1 September 2008 decided "to step up relations with Georgia, including visa facilitation measures and the possible establishment of a full and comprehensive free trade area as soon as the conditions are met".

For Georgia in particular, taking into account that the residents of South Ossetia and Abkhazia who hold Russian passports are beneficiaries of the facilitations provided by the visa facilitation Agreement between the European Community and the Russian Federation, equivalent facilitations should be granted to all Georgians citizens.

The present recommendation to the Council in order to authorise the Commission to open negotiations with Georgia on the facilitation of issuance of short-stay visa is aimed at fulfilling the commitments expressed above.

1.3. Visa free regime for EU citizens

Currently all EU citizens are exempt from the visa obligation for entry and short stay in the territory of Georgia.

Provided that Georgia maintains the visa free regime for EU citizens, a future Agreement containing different rights and obligations for each side should be envisaged, as for the time being the EU is not in a position to offer visa-free entry and short-stay to the citizens of Georgia: EU citizens travelling to Georgia would be exempt from the visa obligation, while citizens of Georgia entering the Schengen area would need a visa, although the future Agreement would provide for facilitations for the issuance of visas. However, the Agreement should also cover the scenario in which Georgia would reintroduce the visa requirement for EU citizens in the future. If this were to happen, the same facilitations granted under the Agreement to the citizens of Georgia would automatically, on the basis of reciprocity, have to apply to EU citizens.

1.4. The negotiating directives

The European Commission has already negotiated visa facilitation Agreements with other third countries. The experience acquired in previous negotiations will be useful for the future negotiations with Georgia.

The Agreement would cover exclusively short-stay visas, i.e. visas for stays envisaged for no longer than three months in the Schengen territory.

The main objectives of the Agreement should be the following:

1.4.1. *Administrative fee for processing a visa application*

Currently the administrative fee for processing visa applications for all categories of visas in the Schengen acquis is fixed at € 60 (Annex 12 to the Common Consular Instructions on visas for the diplomatic missions and consular posts¹, amended by Council Decision 2006/440/EC²).

The negotiations should aim at reducing the administrative fee for processing a visa application for all Georgians citizens and for all categories of visas covered by the Agreement to €35.

If Georgia were to reintroduce the visa obligation for EU citizens, the visa fee to be charged by Georgia to EU citizens should not be higher than €35.

At the same time, the negotiations should also aim at determining categories of persons to whom visas should be delivered free of charge. The specific categories that would benefit from this facilitation have to be further defined.

1.4.2. *Simplifying conditions for issuing visas*

In order to simplify the visa issuing procedures, it would be appropriate to provide for simplifications concerning documentary evidence. A simplified request from the host person/organisation should be sufficient for certain categories of persons.

Moreover, the Agreement should provide for the issuing of multiple-entry visas, with a multi-annual validity, for certain categories of *bona fide* citizens of Georgia who have valid reasons to travel frequently to the Schengen territory.

1.4.3. *Reducing length of procedures for issuing visas*

The Agreement should set clear deadlines for issuing visas. The standard length should take into account the necessity to ensure compatibility with the existing acquis, notably the provisions concerning prior consultation and annex 5B of the Common Consular Instructions. However, the Agreement should allow for exceptions in special circumstances, either allowing for longer deadlines when further scrutiny of the visa application is needed, or, on the other hand, including the possibility for accelerated procedures in very limited and justified cases, notably on humanitarian grounds.

¹ OJ C 326, 22.12.2005, p.1.

² OJ L175, 29.6.2006, p.77.

1.4.4. *Visa exemptions*

The approach taken in other visa facilitation Agreements with other third countries- i.e. visa exemption for holders of diplomatic passports, subject to a verification of the security and integrity of their diplomatic passport system and its implementation would also be appropriate vis-à-vis Georgia. This verification should be carried out by the Commission and the Member States.

Following the approach taken in other visa facilitation Agreements with other third countries- in particular the Russian Federation, Ukraine and the Republic of Moldova- as regards "service/official passports", the holders of these passports will not be exempted from the visa requirement.

2. **PURPOSE AND LEGAL BASIS**

This recommendation is submitted to the Council in order to authorise the Commission to negotiate with Georgia an Agreement that contains clear and unambiguous legally binding rights and obligations to ensure simplified visa issuing procedures for citizens of Georgia entering the Schengen Member States. All EU citizens are currently exempt from the visa requirement by Georgia. If the visa requirement for EU citizens were to be reintroduced by Georgia in the future, the same legally binding rights and obligations provided in the Agreement for citizens of Georgia would automatically, on the basis of reciprocity, apply to EU citizens.

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 Community competence and is regulated by Article 62(2)(b) of Title IV of the EC Treaty, which is the basis for the establishment of legislation concerning, *inter alia*, procedures and conditions for issuing visas by the Member States.

The Community has already exercised its competence in this field and has established rules in this respect, notably by adopting Common Consular Instructions on visa for the diplomatic missions and consular posts³.

In accordance with the requirements of Article 10 TEC, Member States bound by these negotiation directives will refrain from negotiating bilaterally with Georgia on the subject matters covered by these directives. In cases where such bilateral negotiations are already ongoing, Member States will suspend these as long as the Community has not concluded its negotiations with Georgia.

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 and Iceland countries associated to the development of the Schengen acquis, shall also be taken into account, as well as the future association of Switzerland and Liechtenstein to the development of the such acquis.

The Community has no power to conclude an Agreement with Georgia on the facilitation of the issuing of short-stay visas in a manner that binds these Member States and associated

³ OJ C 326, 22.12.2005, p.1

countries. However, in order to ensure a common approach towards Georgia on the issue of facilitation of issuance of short-stay visas, covering all Member States and countries associated with the implementation and further development of the Schengen acquis, it would be appropriate that Joint Declarations state the desirability of similar Agreements on visa facilitation to be concluded between Georgia and each of these Member States, associated and future associated countries.

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

Cyprus, that joined the European Union on 1st May 2004, and Bulgaria and Romania, that joined the European Union on 1st January 2007, do not issue Schengen visas yet. Until the Council Decision provided for in Article 3(2) of the 2003 Act of Accession in respect of Cyprus and in Article 4(2) of the 2005 Act of Accession in respect of 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, Bulgaria and Romania participate as from that date 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 2003 Act of Accession in respect of Cyprus and Article 4(2) of the 2005 Act of Accession in respect of Bulgaria and Romania.

Moreover, as a further consequence of the fact that the Community has internal rules in place in the fields covered by the visa facilitation Agreement, which are binding on Cyprus, Bulgaria and Romania, the Community 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.

4. LINK TO THE READMISSION AGREEMENT TO BE NEGOTIATED BETWEEN THE EUROPEAN COMMUNITY AND GEORGIA

The Commission considers that negotiations concerning visa facilitation should be carried out taking into account the specific development of the relationship between the EU and Georgia and the latter's cooperation towards the objective of efficient management of migration issues, as stated in the Hague Programme.

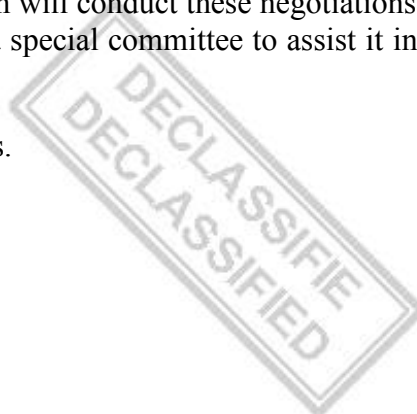
In line with the Hague Programme and the Common approach on visa facilitation, there is a need for a clear link between the negotiations for a visa facilitation Agreement and negotiations for a readmission Agreement.

Therefore, it is suggested to include a provision whereby the Agreement would enter into force on the same date as the entry into force of the readmission Agreement to be negotiated between the European Community and Georgia. Likewise, the termination or suspension of the readmission Agreement should entail the termination or suspension of all or parts of the visa facilitation Agreement.

RECOMMENDATION.

In light of the above considerations, the Commission recommends:

- that the Council authorise the Commission to negotiate with Georgia 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 Community, the Council appoint a special committee to assist it in its task, and;
- that the Council issue the appended negotiating directives.



ANNEX

NEGOTIATING DIRECTIVES

The Commission shall, in the course of negotiations, aim to achieve the specific objectives which are set out in detail below.

1. PURPOSE AND SCOPE OF THE AGREEMENT

The purpose of the Agreement shall be to establish clear and unambiguous legally binding rights and obligations to ensure simplified visa issuing procedures for citizens of Georgia entering the Schengen Member States. If the visa requirement were to be reintroduced by Georgia for EU citizens, the same legally binding rights and obligations provided in the Agreement for citizens of Georgia would automatically, on the basis of reciprocity, apply to EU citizens.

2. SPECIFIC OBJECTIVES

The negotiations shall aim to attain a series of specific objectives which are set out below.

When defining categories of beneficiaries for the different types of visa facilitations to be included in the draft Agreement, those covered in previous Agreements with third countries could be regarded as a precedent, where appropriate.

2.1. Administrative fee for processing a visa application

The fee for processing applications for all categories of visas covered by the Agreement shall be fixed in the agreement at €35.

If Georgia were to reintroduce the visa requirement for EU citizens, the visa fee to be charged by Georgia to EU citizens shall not be higher than €35.

The Agreement shall provide for specific justified exceptions and should define categories of persons for whom waiving of the visa fee is justified.

2.2. Simplifying conditions for issuing visas

The Agreement shall define simplified procedures for issuing visas in specific circumstances.

In particular, it shall define the criteria for issuing multiple-entry visas, valid for a long period of time, to specific categories of persons and shall introduce simplifications concerning documentary evidence to be presented in order to obtain a visa for certain specified categories of persons.

2.3. Fixing a standard length of procedure for issuing visas

The Agreement shall define a short standard duration for processing a visa application, taking into account the possible need for prior consultation between Member States. However it should also provide for longer processing times or accelerated procedures in specific justified cases.

2.4. Visa exemptions

The Agreement shall provide for holders of diplomatic passports issued by Georgia to be exempted from the visa requirement when travelling to the Schengen territory.

The inclusion of the latter provision in the Agreement shall be subject to prior verification of the security and integrity of the Georgia's system for issuing diplomatic passports and its implementation. The verification of the security and integrity of the diplomatic passport system and its implementation will be carried out by the Commission with the assistance of the Member States.

3. MANAGEMENT OF THE AGREEMENT

The Agreement shall contain a provision setting up a Committee of experts. The Committee shall be composed by representatives of the European Community and Georgia. The Community shall be represented by the Commission. The meetings shall take place where necessary at the request of one of the Contracting Parties.

The Committee of experts shall in particular have the tasks of:

- monitoring the implementation of the agreement;
- suggesting amendments and additions to it.

4. RELATION WITH EXISTING BILATERAL AGREEMENTS BETWEEN MEMBER STATES AND GEORGIA

The Agreement should contain a clause whereby, from its entry into force, its provisions shall take precedence over the provisions of any bilateral Agreements or arrangements, which have been concluded between individual Member States and Georgia, insofar as the provisions of the latter cover issues dealt with by this Agreement.

In accordance with the requirements of Article 10 TEC, Member States bound by these negotiations directives will refrain from negotiating bilaterally with Georgia on the subject matters covered by these directives. In cases where such bilateral negotiations are already ongoing, Member States will suspend these as long as the Community has not concluded its negotiations with Georgia.

5. TERRITORIAL APPLICATION, ENTRY INTO FORCE, DURATION, SUSPENSION AND TERMINATION OF THE AGREEMENT

The Agreement should contain provisions related to its territorial application, entry into force and duration. It should be concluded for an indefinite period and should contain provisions, which give both Contracting Parties a possibility to suspend and/or terminate the entirety or parts of this Agreement.

As far as the entry into force is concerned, the Agreement shall contain a clause whereby the Agreement enter into force on the same date as the entry into force of the readmission Agreement to be negotiated between the European Community and Georgia. Likewise, the

termination or suspension of the readmission Agreement shall entail the termination or suspension of all or parts of this Agreement.

6. VARIABLE GEOMETRY

The Agreement shall take into account the special positions of Denmark, Ireland, the United Kingdom, Iceland and Norway. Joint declarations should state the desirability that arrangements on visa facilitation should be concluded between Georgia and each of these Member States and associated countries in similar terms as the Agreement with the Community.

If the Agreement between the EU, the EC and the Swiss Confederation concerning the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* will have been put into effect by the time negotiations with Georgia are concluded, a similar declaration will also be made in respect of Switzerland.

If the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, will have been put into effect by the time negotiations with Georgia are concluded, a similar declaration will also be made in respect of Liechtenstein.

7. APPLICABILITY TO CYPRUS, BULGARIA AND ROMANIA

A protocol annexed to the Agreement should, for the transitional period up to the full implementation of the Schengen *acquis* by Cyprus, Bulgaria and Romania provide for provisions allowing to take into account, for the implementation of the Agreement, of the fact that these Member States will not issue Schengen visas, but national ones.