



EUROPEAN
COMMISSION

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2014/0315 (NLE)

Proposal for a

COUNCIL DECISION

determining the Union position for a Decision of the Joint Committee set up under the Agreement between the European Union and Ukraine on the facilitation of the issuance of visas, with regard to the adoption of Common Guidelines for the implementation of the Agreement

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Agreement between the European Union and Ukraine on the facilitation of the issuance of visas entered into force on 1 January 2008. The Agreement established, on the basis of reciprocity, legally binding rights and obligations for the purpose of simplifying the visa issuing procedures for Ukrainian citizens. Article 12 of this Agreement set up a Joint Committee tasked to monitor the implementation of the Agreement.

The Joint Committee noted the need for common guidelines in order to ensure a fully harmonised implementation of the Visa Facilitation Agreement amongst the consulates of the Member States, and for clarifying the relationship between the provisions of that Agreement and the provisions of the contracting parties that continue to apply to visa issues not covered by the Agreement.

The Joint Committee adopted such guidelines by its Decision No 1/2009 of 25.11.2009. These Guidelines are not part of the Agreement and therefore they are not legally binding. However, it is highly recommended that diplomatic and consular staff consistently follow them when implementing the provisions of the Agreement.

Following the entry into force, on 1.07.2013, of the amended Agreement between the European Union and Ukraine on the facilitation of the issuance of visas, the Guidelines needed to be adapted accordingly.

The Guidelines have been adapted in line with the amended Agreement which contains new provisions on further facilitations in the procedures for issuing visas for an intended stay of no more than 90 days per period of 180 days in the Schengen area for the citizens of Ukraine, as well as with new EU legislation in the area of common visa policy, such as the Visa Code. Therefore they reflect the applicable EU visa *acquis* in force at present.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The Guidelines as annexed to the Annex of this proposal for a Council Decision are the outcome of consultations with the Member States in the context of the Visa Working Party on 12.12.2013, 10.01., 20.02., and 15.04.2014. Commission consulted these Guidelines with responsible authorities in Ukraine on several occasions, including in the Joint Committee meeting on 14.05.2014.

3. LEGAL ELEMENTS OF THE PROPOSAL

The Guidelines, which are to be adopted on the basis of the empowerment given to the representative of the Commission in the Joint Committee on the basis of this proposal, will not be legally binding upon the Member States. These Guidelines are to provide guidance and explain in detail the provisions of the Agreement to persons who implement the amended Visa Facilitation Agreement between the EU and Ukraine.

The Guidelines take into consideration the provisions of the Visa Code and other legislative acts in the field of EU visa policy in order to ensure that consular representatives of the Member States act in accordance with the entire EU visa *acquis* when implementing the provisions of the Visa Facilitation Agreement.

The provisions of the Agreement have precedence over the provisions of the Visa Code on matters which they both regulate.

4. FINANCIAL AND BUDGET IMPACT

This proposal has no impact on the EU budget.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(9) thereof;

Whereas:

- (1) Article 12 of the Agreement between the European Union and Ukraine on the facilitation of the issuance of visas¹ ("Visa Facilitation Agreement") sets up a Joint Committee. It provides that the Joint Committee should in particular monitor the implementation of that Agreement.
- (2) Within that responsibility, the Joint Committee noted the need for common guidelines in order to ensure a fully harmonised implementation of the Visa Facilitation Agreement amongst the consulates of the Member States, and for clarifying the relationship between the provisions of that Agreement and the provisions of the contracting parties that continue to apply to visa issues not covered by the Agreement.
- (3) The Joint Committee already adopted such guidelines by its Decision No 1/2009 of 25.11.2009. Those guidelines should be adapted to the new provisions of the amended Visa Facilitation Agreement and to the changes in Union internal law on visa policy. In the interests of clarity it is appropriate to replace those guidelines.
- (4) The amending Agreement between the European Union and Ukraine on the facilitation of the issuance of visas² entered into force on 1 July 2013.
- (5) Regulation (EC) No 810/2009 of the European Parliament and of the Council³ entered into force on 5 April 2010 and established the procedures and conditions for issuing visas for transit through or intended stays in the territory of the Member States not exceeding 90 days in any 180-days period.
- (6) The position to be adopted within the Joint Committee regarding the adoption of the common guidelines should be established,

¹ OJ L 332, 29.11.2007, p. 68.

² OL L 168, 20.6.2013, p. 11.

³ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (OJ L 243, 15.9.2009., p. 1).

HAS DECIDED AS FOLLOWS:

Sole Article

The position to be adopted by the Union within the Joint Committee set up by Article 12 of the Agreement between the European Union and Ukraine on the facilitation of the issuance of visas with regard to the adoption of common guidelines on its implementation shall be based on the draft Joint Committee decision annexed attached to this Decision.

Done at Brussels,

For the Council
The President