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2018/0002 (NLE)

Proposal for a

COUNCIL DECISION

**establishing the position to be taken on behalf of the European Union within the Joint Committee set up under the Agreement between the European Union and the Republic of Azerbaijan 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

• **Reasons for and objectives of the proposal**

The Agreement between the European Union and the Republic of Azerbaijan to facilitate the issuing of visas¹ entered into force on 1 January 2014. The Agreement established, on the basis of reciprocity, legally binding rights and obligations to simplify procedures for issuing visas to the citizens of the European Union and of the Republic of Azerbaijan. Article 12 of the Agreement set up a Joint Committee whose task include monitoring the implementation of the Agreement. The Joint Committee noted the need for common guidelines to ensure that the consulates of Azerbaijan as well as those of the Member States, which are Parties to the Convention implementing the Schengen Agreement, apply the provisions of the Agreement in an entirely consistent way and to clarify the relationship between the Agreement and the other legal provisions of the contracting parties that continue to apply to visa issues not covered by the Agreement.

These Guidelines are not part of the Agreement and are not legally binding. However, it is highly recommended that diplomatic and consular staff abide by them in a consistent fashion.

• **Consistency with existing provisions in the policy area**

The Agreement takes precedence over 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)² on matters which they both regulate.

Visa Code provisions apply to all issues not covered by the Agreement, such as determining which Member State, among those who are Party to the Convention implementing the Schengen Agreement, is responsible for processing a visa application, the grounds for refusing to issue a visa, the right to appeal against a negative decision or the general rules on the personal interview with the applicant.

Schengen rules³ and, where appropriate, national law also continue to apply to issues that are not covered by the Agreement, such as the recognition of travel documents, proof of sufficient means of subsistence, refusal of entry to the territory of the Member States, and expulsion measures.

Under Article 2(1) of the Agreement, the visa facilitations provided for in the Agreement apply to Azerbaijani citizens only insofar as they are not exempted from the visa requirement by Regulation 539/2001⁴. Indeed, if the Republic of Azerbaijan were to be transferred to Annex II of Regulation 539/2001, which lists the countries whose nationals are exempted from the visa requirement, the Agreement would cease to apply. However, as such an exemption would be granted only to holders of biometric passports (exemption to be specified in an Annex II footnote), the Agreement would continue to apply to citizens of the Republic of Azerbaijan holding a non-biometric passport.

¹ OJ L 128, 30.4.2014, p. 49-60.

² OJ L 243 of 15.9.2009, p. 1.

³ Notably, Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23.3.2016, p. 1.

⁴ Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ L 81, 21.3.2001, p. 1.

2. LEGAL ELEMENTS OF THE PROPOSAL

The Guidelines, to be adopted by the Joint Committee following the adoption of the European Union's position on the basis of this proposal, are intended to explain in detail the provisions of the Agreement, so that it is properly and consistently implemented.

They take into consideration the Visa Code and other legislative acts in the field of EU and Azerbaijani visa policy. The aim of the Guidelines is to ensure that the Member States' consular staff act in accordance with the EU visa *acquis* when implementing the Agreement. They are also intended for use by Azerbaijani consulates to ensure the proper implementation of the Agreement.

3. RESULTS OF CONSULTATIONS AND IMPACT ASSESSMENTS

The Commission discussed these draft Guidelines with the competent authorities of the Republic of Azerbaijan at the Joint Committee meetings of 27 May 2015 and 3 May 2016, and through an exchange of emails between the contracting parties.

Member States were consulted on the draft Guidelines annexed to this proposal for a Council Decision in the context of the local Schengen cooperation in Baku and the Visa Working Party (the last consultation ended on 16 June 2017). The Joint Committee agreed the final version of the Guidelines through an exchange of emails on 5 June 2017.

4. BUDGETARY IMPLICATIONS

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 77(2)(a), in conjunction with Article 218(9), thereof,

Having regard to Council Decision 2014/242/EU of 14 April 2014 concerning the conclusion of the Agreement between the European Union and the Republic of Azerbaijan to facilitate the issuing of visas⁵,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 12 of the Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas⁶ (hereinafter referred to as ‘the Agreement’) sets up a Joint Committee. It provides, in particular, that the Joint Committee is to monitor the implementation of the Agreement.
- (2) Regulation (EC) No 810/2009 of the European Parliament and of the Council⁷ established the procedures and conditions for issuing visas for transit through or intended stays on the territory of the Member States not exceeding 90 days in any 180-day period.
- (3) The common guidelines are needed to ensure fully consistent implementation of the Agreement by the consulates of the Member States and to clarify the relationship between the Agreement and the provisions of the contracting parties that continue to apply to visa issues not covered by the Agreement.
- (4) It is appropriate to establish the position to be adopted on the European Union’s behalf within the Joint Committee as regards adopting common guidelines for the implementation of the Agreement.
- (5) This Decision constitutes a development of Schengen *acquis* provisions in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen

⁵ OJ L 128, 30.4.2014, p. 47-48.

⁶ OJ L 128, 30.4.2014, p. 49-60.

⁷ 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 of 15.9.2009, p. 1.).

*acquis*⁸. The United Kingdom is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

- (6) This Decision constitutes a development of Schengen *acquis* provisions in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*⁹. Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (7) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on the European Union's behalf within the Joint Committee set up by Article 12 of the Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas with regard to the adoption of common guidelines for the implementation of the Agreement, shall be based on the draft Decision of the Joint Committee attached to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

For the Council
The President

⁸ Council Decision No 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*, OJ L 131, 1.6.2000, p. 43.

⁹ Council Decision No 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*, OJ L 64, 7.3.2002, p. 20.