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2019/0184 (NLE)

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of the Agreement between the European Union and the Republic of Belarus on the facilitation of the issuance of visas

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

In the context of the Eastern Partnership Summit in May 2009, the EU reaffirmed its political support towards full liberalization of the visa regime in a secure environment, and towards promoting mobility by concluding visa facilitation and readmission agreements with Eastern Partnership countries. According to the common approach for the development of EU policy on visa facilitation agreed at the level of COREPER by the Member States in December 2005, a visa facilitation agreement would not be concluded without a readmission agreement being in place.

On that basis, the Commission presented on 12 November 2010, a recommendation to the Council with a view to obtaining directives to negotiate Agreements with the Republic of Belarus on, respectively, the facilitation of the issuance of short-stay visas, and readmission of persons residing without authorisation.

Following the authorisation given by the Council on 28 February 2011[1], the negotiations with the Republic of Belarus were formally opened in Brussels on 12 June 2014.

Five further rounds of negotiations took place on 24 November 2014 in Minsk, on 12 March 2015 in Brussels, on 20 June 2017 in Minsk, on 11 October 2018 and on 26 March 2019 in Brussels. The chief negotiators initialled the text of the agreement on 17 June 2019 via exchange of emails.

In the meantime, Belarus, the European Union and seven participating Member States (Bulgaria, Romania, Lithuania, Poland, Hungary, Finland and Latvia) signed a Joint Declaration on a Mobility Partnership on 13 October 2016.

As from 12 February 2017, the citizens of the European Union are exempted from the visa requirement for entering and staying in the territory of the Republic of Belarus for periods of up to 5 days, provided that they cross the border at the Minsk International Airport. On 24 July 2018, this period of visa-free stay was extended to 30 days under the same conditions. For periods of stay exceeding 30 days and no longer than 90 days (in any 180-day period), the Agreement will apply reciprocally.

Member States have been regularly informed and consulted in the relevant Council's Working Parties at all stages of the negotiations. The final draft of the Agreement text was shared with the Visa Working Party and generally endorsed, via silence procedure, on 5 April 2019.

On 17 April 2019, the European Parliament was informed about the conclusion of negotiations on both the Visa Facilitation and Readmission Agreements, by means of a letter sent by the Director General of DG Migration and Home Affairs to the Chair of the Committee on Civil Liberties, Justice and Home Affairs. The draft texts of both Agreements were annexed.

The proposed decision concerning the conclusion sets out the necessary internal arrangements for the practical application of the Agreement. In particular**,** it specifies that the Commission, assisted by experts from Member States, represents the Union within the Joint Visa Facilitation Committee set up by Article 12 of the Agreement.

[1] The negotiating directives were amended by the Council on 2 March 2015 in order to include the possibility to suspend the diplomatic visa waiver for a broader range of reasons than those specified in the standard suspension provisions, e.g. for human rights and democracy considerations as well as the abuse of that waiver.

The attached proposal constitutes the legal instrument for the conclusion of the Agreement. The Council will decide by qualified majority.

2. AIM AND CONTENT OF THE AGREEMENT

The Agreement between the European Union and the Republic of Belarus on the facilitation of the issuance of visas (hereinafter: 'the Agreement') aims to facilitate, on the basis of reciprocity, the issuance of visas for an intended stay of no more than 90 days in any 180-day period to the citizens of the Union and Belarus.

The Commission considers that the objectives set by the Council in its negotiating directives were attained and that the draft Agreement is acceptable to the Union.

The final content of the Agreement can be summarised as follows:

– in principle, for all visa applicants, a decision on whether or not to issue a visa will have to be taken within 10 calendar days. This period may be extended up to 30 calendar days when further scrutiny is needed. In urgent cases, the period for taking a decision may be reduced to two working days or less. As a rule, the visa applicants can have an appointment for lodging their application within a period of two weeks from the date of request and in cases of urgency immediately or without an appointment;

– the visa fee for processing applications lodged by citizens of the European Union and the Republic of Belarus is set at EUR 35. This fee will be applied to all visa applicants. Moreover, the following categories of persons will benefit from a full waiver of the visa fee: children under the age of 12, persons with disabilities, close relatives, members of official delegations participating in government activities, pupils, students and post-graduate students, representatives of civil society organisations, humanitarian cases and persons participating in scientific, cultural, artistic activities and sport events;

– should the Parties decide to cooperate with an external service provider for, inter alia, the collection of visa applications, the fee to be paid to the external service provider cannot exceed EUR 30. The possibility for the Parties' citizens to lodge the application directly at the consulates shall be maintained, insofar as it is possible, e.g. where there is sufficient staff to cope with the workload and fulfil the obligations established by the agreement;

– the documents to be presented regarding the purpose of the journey have been simplified for the following categories of applicants: close relatives, businesspeople, members of official delegations, pupils, students and post-graduate students, participants in scientific, cultural and sporting events, journalists, persons visiting military and civil burials (including relatives), representatives of civil society, members of the professions participating in the international exhibitions, conferences, symposia, seminars or other similar events, drivers conducting international cargo and passenger transportation services, participants in official exchange programmes of twin cities, persons visiting for medical reasons, persons participating in international sport events, member of train, refrigerator and locomotive crews and participants in official EU cross-border cooperation programmes. For these categories of persons, only the documents listed in the agreement can be requested for justifying the purpose of the journey. As a rule, no other justification, invitation or validation provided for by the legislation of the Member States or the Republic of Belarus can be required;

– there are also simplified criteria for issuing multiple-entry visas for the following categories of persons:

(a) for members of national and regional governments, parliaments and courts, permanent members of official delegations, spouses and children visiting citizens of

the European Union legally residing in the territory of Belarus or citizens of the Republic of Belarus legally residing in the Member States or EU citizens residing in the territory of the Member States of which they are nationals or citizens of the Republic of Belarus residing in the territory of Belarus: multiple entry visas with a term of validity of 5 years (or shorter, if the intention to travel regularly is manifestly limited, for instance where the period of the validity of their mandate or authorisation for legal residence is shorter);

(b) participants in scientific, cultural, official exchange or cross-border programmes, international sport events, journalists, students, members of official delegations, representatives of civil society organisations, members of the professions participating in the international exhibitions, conferences, symposia, seminars or other similar events, drivers conducting international cargo and trains crews and persons needing to visit regularly for medical reasons: multiple entry visas valid for 1 year;

(c) the same categories mentioned in (b): visas valid for a minimum of 2 years and a maximum of 5 years should be issued (provided that during the previous two years they have lawfully used the 1 year multiple-entry visas, unless the need or intention to travel frequently is manifestly limited to a shorter period);

– citizens of the European Union and the Republic of Belarus who are holders of valid biometric diplomatic passports and the holders of valid EU *laissez-passer* are exempted from the visa requirement for short-stays. A first assessment of the security and integrity of the system of issuance of the Belarusian diplomatic passports, including the security features of the latter was presented by the Commission in April 2015, with a satisfactory outcome as regards the system of issuance. The security level of the Belarusian diplomatic passports was, however, not considered sufficient enough by some Member States. The Republic of Belarus subsequently informed that it will start issuing biometric passports in compliance with the latest guidelines and recommendations of International Civil Aviation Organisation from the beginning of 2020 and accepted to limit the visa waiver to biometric diplomatic passports (additional requirement not requested by the negotiating directives). At the sixth and last round of negotiations on 26 March 2019, the Republic of Belarus provided the Commission with updated information on the system of issuance and technical specifications of these passports, and committed to share a specimen of the new biometric passport and the final technical specifications at the latest by October 2019. In these circumstances, the final assessment of Belarus' system of issuance will have to be made by the Commission, in consultation with the Member States, before the conclusion of the Agreement;

– the final clauses provide the possibility for the Parties to suspend the agreement, in whole or in part (e.g. the visa waiver for diplomatic biometric passport holders) for any reason. This provision therefore covers suspension grounds such as the breach or abuse of a provision of the agreement, such as the diplomatic passport visa waiver (article 10), for human rights and democracy considerations (also referred to in a preamble to the Agreement), as well as for lack of cooperation on readmission and/or unsatisfactory implementation of the Readmission Agreement;

– the final clauses also lay down that the visa facilitation agreement can only enter into force at the date of entry into force of the Readmission Agreement;

– the importance of the fundamental principles governing the cooperation between the Parties as well as the obligations and responsibilities, including the respect of human rights

and democratic principles, stemming from the relevant international instruments to which they are bound, is underlined in a preamble to the Agreement;

– a protocol addresses the specific situation of the Member States that do not fully apply the Schengen *acquis* yet and their unilateral recognition of Schengen visas and residence permits issued to citizens of the Republic of Belarus for the purpose of transit through their territory in accordance with Decision No 565/2014/EU;

– a Joint Declaration is attached to the Agreement on cooperation on travel documents and regular exchange of information on travel document security;

– a Joint Declaration is attached to the Agreement concerning harmonisation of information procedures for issuing short-stay visas and documents to be submitted when applying for short-stay visas;

– the specific situations of Denmark, the United Kingdom and Ireland are reflected in the preamble and in Joint Declarations attached to the Agreement. The close association of Iceland, Norway, Switzerland and Liechtenstein to the implementation, application and development of the Schengen *acquis* is reflected in a Joint Declaration to the Agreement[2];

– a Joint Declaration on consular staffing is attached to the Agreement in order to reflect the importance the Parties attach to the availability of sufficient numbers of staff in their consulates for ensuring the effective implementation of the Agreement.

3. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

This proposal is submitted to the Council in order to authorise the signing of the Agreement.

The legal basis for this proposal is point (a) of Article 77(2) of the Treaty on the Functioning of the European Union (TFEU), in conjunction with Article 218(5) thereof.

• Subsidiarity (for non-exclusive competence)

Not applicable.

• Proportionality

The present proposal does not go beyond what is necessary to achieve the objective pursued, namely the signature of an international agreement facilitating the issuing of visas to Belarusian and Union citizens.

4. BUDGETARY IMPLICATIONS

This proposal does not entail additional costs for the EU budget.

5. CONCLUSIONS

In the light of the above-mentioned results, the Commission proposes that the Council decides that the Agreement be signed on behalf of the Union and authorises the Council Secretariat General to establish the respective instrument of full powers.

[2] The preamble and Joint Declaration on the situation of the United Kingdom may have to be reviewed following the UK withdrawal.

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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 point (a) of Article 77(2) in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) On 28 February 2011, the Council authorised the Commission to open negotiations with the Republic of Belarus on an Agreement between the European Union and the Republic of Belarus on the facilitation of the issuance of visas ('the Agreement'), in parallel with the negotiations of an Agreement on the readmission of persons residing without authorisation. The negotiations were successfully concluded by the initialling of the Agreement via exchange of emails on 17 June 2019.

(2) In the context of the Eastern Partnership Summit Declaration of 7 May 2009, the Union and the partner countries expressed their political support towards liberalisation of the visa regime in a safe and secure environment and reaffirmed their intention to take gradual steps towards a visa free regime for their citizens in due course.

(3) The purpose of the Agreement is to facilitate, on the basis of reciprocity, the issuance of visas for an intended stay of no more than 90 days in any 180-day period to the citizens of the Union and Belarus.

(4) This Decision constitutes a development of the provisions of the Schengen *acquis* 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 *acquis*[1]; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(5) This Decision constitutes a development the provisions of the Schengen *acquis* 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*[2]; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

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[1] 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 *acquis* (OJ L 131, 1.6.2000, p. 43).

[2] 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).

(6) 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.

(7) Therefore, the Agreement should be signed on behalf of the Union, subject to its conclusion at a later date, and the Joint Declarations attached to the Agreement be approved,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Agreement between the European Union and the Republic of Belarus on the facilitation of the issuance of visas is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement[3].

Article 2

The Joint Declarations attached to the Agreement shall be approved on behalf of the Union.

Article 3

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the negotiator of the Agreement.

Article 4

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

Done at Brussels,

For the Council
The President

[3] The text of the Agreement will be published together with the decision on its conclusion.