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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	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 Georgia on the facilitation of the issuance of visas to citizens of Georgia, with regard to the adoption of Common Guidelines for the implementation of the Agreement

Delegations will find attached document COM(2016) 304 final.

Encl.: COM(2016) 304 final



Brussels, 26.5.2016
COM(2016) 304 final

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Proposal for a

COUNCIL DECISION

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

The Agreement between the European Union and Georgia facilitating the issuing of visas (hereinafter 'the Agreement')¹ entered into force on 1 March 2011. The Agreement established, on the basis of reciprocity, legally binding rights and obligations to simplify the visa issuing procedures for Georgian citizens. Article 12 of the Agreement set up a Joint Committee tasked with monitoring the implementation of the Agreement. The Joint Committee noted the need for common guidelines to ensure that the Schengen Member States' consulates implement the Agreement in a fully harmonised way and to clarify the relationship between the Agreement and the provisions of the contracting parties (hereinafter "the Parties") that continue to apply to visa issues not covered by the Agreement.

These Guidelines are not part of the Agreement and not legally binding. However, it is highly recommended that diplomatic and consular staff consistently follow them when implementing the Agreement.

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

The Agreement has precedence over the Visa Code on matters which they both regulate.

Visa Code² provisions apply to all issues not covered by the Agreement such as the determination of the Schengen Member State 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 rules and, where appropriate, national law also continue to apply to issues which 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, expulsion measures.

According to Article 2(1) of the Agreement, the visa facilitations provided for in the Agreement apply to citizens of Georgia only in so far as they are not exempted from the visa requirement by Regulation 539/2001³. Indeed, if Georgia were to be transferred to Annex II of Regulation 539/2001 listing the countries whose nationals are exempted from the visa requirement, the Agreement would cease to apply. However, as such an exemption would only be granted to holders of biometric passports (exemption to be specified in an Annex II footnote), the Agreement would continue to apply to citizens of Georgia holding a non-biometric passport.

¹ OJ L 52, 25.2.2011, p. 34-44.

² 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 L243 of 15.9.2009, p.1.

³ 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, which are to be adopted by the Joint Committee following the adoption of an EU position on the basis of this proposal, are to explain in detail the provisions of the Agreement, aiming at its proper and fully harmonised implementation.

The Guidelines take into consideration the Visa Code and other legislative acts in the field of EU visa policy. The aim is to ensure that consular staff of the Member States acts in accordance with the EU visa *acquis* when implementing the Agreement.

3. RESULTS OF CONSULTATIONS AND IMPACT ASSESSMENTS

The Commission has discussed these draft Guidelines with the responsible authorities of Georgia at the Joint Committee meetings of 01/06/2011, 24/11/2011, 13/02/2012, 26-27/02/2013, 04/06/2014 and 13/10/2015, as well as in exchanges of emails between the Parties between the Joint Committee meetings. Several outstanding issues required deeper analysis on both sides before a mutually satisfactory compromise could be reached, in particular on the issue of journalists' and carriers' professional organisations (see point 2.2.1 letters (e) and (k) of the Guidelines).

The draft Guidelines attached in the Annex to this proposal for a Council Decision have been consulted with the Member States in the context of the local Schengen Cooperation in Tbilisi and the Visa Working Party (last consultation: 20 November 2015). The final version of the Guidelines was agreed by the Joint Committee at its sixth meeting, held on 13 October 2015.

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 the proposal from the European Commission,

Whereas:

- (1) Article 12 of the Agreement between the European Union and Georgia on facilitating the issuing of short-stay visas to citizens of Georgia ('the Agreement') sets up a Joint Committee. It provides in particular that the Joint Committee is to monitor the implementation of the Agreement.
- (2) The Visa Code (Regulation (EC) No 810/2009 of the European Parliament and of the Council) 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 harmonised 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 Union's behalf within the Joint Committee on the adoption of 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

*acquis*⁴. 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*⁵. 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 Union's behalf within the Joint Committee set up by Article 12 of the Agreement between the European Union and Georgia on facilitating the issuing of short-stay visas to citizens of Georgia, 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*

⁴ 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. 43-47.

⁵ 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. 20-23.