



EUROPEAN COMMISSION

Brussels, 5.7.2012
COM(2012) 266 final

2012/0138 (NLE)

Proposal for a

COUNCIL DECISION

**concerning the conclusion of the Agreement between the European Union and Ukraine
amending the Agreement between the European Community and Ukraine on the
facilitation of the issuance of visas**

EXPLANATORY MEMORANDUM

I. POLITICAL AND LEGAL FRAMEWORK

The Visa Facilitation Agreement between the European Community and Ukraine¹ has been in force since 1 January 2008.

Article 12 of the Visa Facilitation Agreement establishes a Joint Committee tasked *inter alia* with monitoring the implementation of the Agreement and suggesting amendments and additions thereto. The Joint Committee, at its 6th meeting on 5 May 2011 in Brussels endorsed suggestions for amendments and additions to the Visa Facilitation Agreement.

At political level, at the 8th EU-Ukraine Ministerial Meeting on Justice, Freedom and Security on 9 June 2010, the Parties looked forward to constructive negotiations on possible amendments to the Visa Facilitation Agreement.

On that basis the Commission presented on 29 October 2010 a recommendation to the Council in order to authorise the Commission to open negotiations with Ukraine on an Agreement amending the Visa Facilitation Agreement.

Following the authorisation given by the Council on 11 April 2011, the negotiations with Ukraine on an Agreement amending the Visa Facilitation Agreement were opened in Brussels on 6 May 2011. Three further rounds of negotiations took place on 11 July 2011 in Kiev and on 9 November 2011 and 14 December 2011 in Brussels. The final text of the amending Agreement was initialled in February 2012 by the chief negotiators.

Member States have been regularly informed and consulted in the relevant Council Working Groups at all stages of the negotiations.

On the part of the Union, the legal basis for the amending Agreement is Article 77(2)(a), in conjunction with Article 218 of the TFEU.

The Commission signed the amending Agreement on ... In accordance with Art. 218(6)(a) of the TFEU the European Parliament's consent for the conclusion of the amending Agreement was given on ...

II. OUTCOME OF THE NEGOTIATIONS

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

The final content of it can be summarised as follows:

- simplified requirements for documents to be presented regarding the purpose of the journey for the following categories of applicants:
 - (a) drivers conducting international cargo and passenger transportation services and journalists: have been reviewed.

¹ Agreement between the European Community and Ukraine on the facilitation of the issuance of visas, OJ L 332/68, 18.12.2007.

(b) members of the technical crew accompanying journalists, participants in official exchange programmes organised by municipal entities other than twin cities, close relatives of EU citizens residing in the territory of the Member State of which they are nationals, persons accompanying persons visiting for medical reasons, representatives of civil society organisations undertaking trips for the purposes of educational training, seminars, conferences, members of the professions participating in international exhibitions, conferences, symposia, seminars or other similar events, representatives of religious communities, and participants in official EU cross-border cooperation programmes: have been introduced;

- clarification of the provisions on the period of validity of multiple-entry visas for the following categories of applicants:

(a) the categories listed in Article 5(1) of the Visa Facilitation Agreement as well as national and regional prosecutors and their deputies, spouses, children and parents visiting citizens of the European Union residing in the territory of the Member State of which they are nationals, and the technical crew accompanying journalists in a professional capacity:

in principle, multiple-entry visas valid for five years shall be issued. Multiple-entry visas with a shorter period of validity shall only be issued where the expiry date of the travel document requires this or where the need or the intention to travel frequently or regularly is manifestly limited to a shorter period;

(b) the categories listed in Article 5(2) of the Visa Facilitation Agreement as well as participants in official exchange programmes organised by municipal entities other than twin cities, representatives of civil society organisations travelling regularly to Member States for the purposes of educational training, seminars, conferences, participants in official EU cross-border cooperation programmes, students and post-graduate students who regularly travel for the purposes of study or educational training, representatives of the religious communities, members of the professions participating in international exhibitions, conferences, symposia, seminars or other similar events held in the territory of the Member States, persons needing to visit regularly for medical reasons and necessary accompanying persons:

(c) in principle, multiple-entry visas valid for one year shall be issued. Multiple-entry visas with a shorter period of validity shall only be issued where the expiry date of the travel document requires this or where the need or the intention to travel frequently or regularly is manifestly limited to a shorter period;

- the possibility of charging a fee of EUR 70 in case of urgent applications:

(a) is abolished for cases, where the visa application and supporting documents are submitted by the visa applicant without justification only three days or less before his/her departure;

(b) is introduced for cases, where based on the distance between the applicant's place of residence and the place where the application has been submitted, the applicant has requested that a decision on the application be taken within three days of its submission and the consulate has accepted to take a decision within three days;

- a full waiving of the visa fee for the following additional categories of applicants: close relatives of citizens of the European Union residing in the territory of the Member State of which they are nationals, participants in official exchange programmes organised by other municipal entities than twin cities, the technical crew accompanying journalists in a professional capacity, representatives of the religious communities, members of the professions participating in international exhibitions, conferences, symposia, seminars or other similar events, participants aged 25 years or less in seminars, conferences, sports, cultural or educational events, organised by non-profit organisations, representatives of civil society organisations undertaking trips for the purposes of educational training, seminars, conferences, participants in official EU cross-border cooperation programmes;
- the possibility for an external service provider, with whom a Member State cooperates in view of issuing a visa, to charge a service fee of up to EUR 30, while maintaining the possibility of all applicants to lodge their applications directly at a consulate;
- the requirement that appointments for lodging an application, where required, shall, as a rule, take place within a period of two weeks from the date when the appointment was requested;
- the exemption from the visa requirement for short stays for the citizens of Ukraine who are holders of biometric service passports. A European Union declaration on the provision containing this exemption from the visa requirement is attached to the amending Agreement. The amending Agreement clarifies that this does not affect the applicability of provisions of existing bilateral Agreements or arrangements between individual Member States and Ukraine on the exemption of the holders of non-biometric service passports from the visa requirement for short stays;
- replying to a specific request formulated by Ukraine, a European Union Declaration is attached to the amending Agreement on documents to be submitted when applying for short-stay visas;
- replying to specific requests formulated by Ukraine, a European Union Declaration is attached to the amending Agreement on facilitations for family members not covered by the legally binding provisions of the Visa Facilitation Agreement;
- the specific situations of Denmark, Ireland and the United Kingdom are reflected in the preamble;
- the association of Switzerland and Liechtenstein to the implementation, application and development of the Schengen acquis is reflected in a Joint Declaration to the amending Agreement.

III. CONCLUSIONS

In light of the above-mentioned results, the Commission proposes that the Council

- approve, after having received consent from the European Parliament, the attached Agreement between the European Union and Ukraine amending the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas.

Proposal for a

COUNCIL DECISION

concerning the conclusion of the Agreement between the European Union and Ukraine amending the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2a), in conjunction with Article 218 (6)(a), thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament²,

Whereas:

- (1) In accordance with Council Decision 2012/XXX of [...] ³, the Agreement between the European Union and Ukraine amending the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas was signed by the Commission on [], subject to its conclusion at a later date.
- (2) The Agreement should be concluded.
- (3) In accordance with the Protocol on the Schengen *acquis* integrated into the framework of the European Union and the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and confirming that the provisions of this Agreement do not apply to the United Kingdom and Ireland,
- (4) In accordance with the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union and confirming that the provisions of this Agreement do not apply to Denmark,

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and Ukraine amending the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas is hereby concluded.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union, to the notification provided for in Article 2 of the Agreement, in order to express the consent of the European Union to be bound by the Agreement.

Article 3

This Decision shall enter into force on the day of its adoption. It shall be published in the *Official Journal of the European Union*.

The date of entry into force of the Agreement shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President

ANNEX
AGREEMENT

between the European Union and Ukraine amending the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas

THE EUROPEAN UNION,

of the one part, and

UKRAINE,

of the other part,

hereinafter referred to as 'the Parties',

HAVING REGARD to the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas, which entered into force on 1 January 2008,

DESIRING to further facilitate people to people contacts,

RECOGNISING the importance of the introduction of a visa free travel regime for the citizens of Ukraine in due course, provided that the conditions for well-managed and secure mobility are in place,

TAKING INTO ACCOUNT the entry into force of 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), notably providing the obligatory motivation of a visa refusal and the right to appeal for applicants in case of refusal,

TAKING INTO ACCOUNT the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice and the Protocol on the Schengen *acquis* integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and confirming that the provisions of this Agreement do not apply to the United Kingdom and Ireland,

TAKING INTO ACCOUNT the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union and confirming that the provisions of this Agreement do not apply to Denmark,

HAVE AGREED AS FOLLOWS:

Article 1

The Agreement between the European Community and Ukraine on the facilitation of the issuance of visas, hereinafter referred to as 'the Agreement', shall be amended in accordance with the provisions of this Article:

[Title of the Agreement]

- (1) In the title, the word "Community" shall be replaced by the word "Union".

[Article 1 of the Agreement

Purpose and scope of application]

- (2) In Article 1 paragraph 2, the following first sentence shall be inserted: Ukraine may only reintroduce the visa requirement for citizens or certain categories of citizens of all Member States and not for citizens or certain categories of citizens of individual Member States.

[Article 2 of the Agreement

General Clause]

- (3) In Article 2 paragraphs 1 and 2, the word "Community" shall be replaced by the words "European Union".

[Article 3 of the Agreement

Definitions]

- (4) In Article 3 point (e), the word "Community" shall be replaced by the words "European Union".

[Article 4 of the Agreement

Supporting documents regarding the purpose of the journey]

- (5) Article 4 paragraph 1 shall be amended as follows:

- (a) point (c) shall be replaced by the following:

"(c) for drivers conducting international cargo and passenger transportation services to the territories of the Member States in vehicles registered in Ukraine:

— a written request from the national association of carriers of Ukraine providing for international road transportation, stating the purpose, duration, destination(s), and frequency of the trips;"

- (b) point (e) shall be replaced by the following:

"(e) for journalists and the technical crew accompanying them in a professional capacity:

— a certificate or other document issued by a professional organisation or the applicant's employer proving that the person concerned is a qualified journalist and stating that the purpose of the journey is to carry out journalistic work or proving that the person is a member of the technical crew accompanying the journalist in a professional capacity;"

- (c) point (i) shall be replaced by the following:

"(i) for participants in official exchange programmes organised by twin cities and other municipal entities:

— a written request of the Head of Administration/Mayor of these cities or other municipal entities;"

(d) point (j) shall be replaced by the following:

"(j) for close relatives — spouse, children (including adopted), parents (including custodians), grandparents and grandchildren — visiting citizens of Ukraine legally residing in the territory of the Member States or citizens of the European Union residing in the territory of the Member State of which they are nationals:

— a written request from the host person;"

(e) point (m) shall be replaced by the following:

"(m) for visiting for medical reasons and necessary accompanying persons:

— an official document of the medical institution confirming necessity of medical care in this institution, the necessity of being accompanied and proof of sufficient financial means to pay the medical treatment;

(f) the following points (n) to (q) shall be inserted:

"(n) for representatives of civil society organisations when undertaking trips for the purposes of educational training, seminars, conferences, including in the framework of exchange programmes:

— a written request issued by the host organisation, a confirmation that the person is representing the civil society organisation and the certificate on establishment of such organisation from the relevant Register issued by a state authority in accordance with the national legislation;

(o) for members of the professions participating in international exhibitions, conferences, symposia, seminars or other similar events held in the territory of the Member States:

— a written request from the host organisation confirming that the person concerned is participating in the event;

(p) for representatives of the religious communities:

— a written request from a religious community registered in Ukraine, stating the purpose, duration and frequency of the trips;

(q) for participants in official EU cross-border cooperation programmes, such as under the European Neighbourhood and Partnership Instrument (ENPI):

— a written request by the host organisation."

[Article 5 of the Agreement

Issuance of multiple-entry visas]

(6) Article 5 paragraphs 1 to 3 shall be replaced by the following:

"1. Diplomatic missions and consular posts of the Member States shall issue multiple-entry visas with the term of validity of five years to the following categories of persons:

(a) members of national and regional Governments and Parliaments, Constitutional Courts and Supreme Courts, national and regional prosecutors and their deputies, if they are not exempted from the visa requirement by the present Agreement, in the exercise of their duties;

(b) permanent members of official delegations who, following official invitations addressed to Ukraine, shall regularly participate in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of the Member States by intergovernmental organisations;

(c) spouses and children (including adopted), who are under the age of 21 or are dependant, and parents (including custodians) visiting citizens of Ukraine legally residing in the territory of the Member States or citizens of the European Union residing in the territory of the Member State of which they are nationals;

(d) business people and representatives of business organisations who regularly travel to the Member States;

(e) journalists and the technical crew accompanying them in a professional capacity.

By way of derogation from the first sentence, where the need or the intention to travel frequently or regularly is manifestly limited to a shorter period, the term of validity of the multiple-entry visa shall be limited to that period, in particular where

- in the case of the persons referred to in lit. a, the term of office,

- in the case of the persons referred to in lit. b. the term of the validity of the status as a permanent member of an official delegation,

- in the case of the persons referred to in lit. c, the period of validity of the authorisation for legal residence of citizens of Ukraine legally residing in the European Union,

- in the case of the persons referred to in lit. d the term of validity of the status as a representative of the business organisation or the work contract,

- in the case of the persons referred to in lit. e the work contract

is less than five years.

2. Diplomatic missions and consular posts of the Member States shall issue multiple-entry visas with the term of validity of one year to the following categories of persons, provided that during the previous year they have obtained at least one visa, have made use of it in accordance with the laws on entry and stay of the visited State:

(a) drivers conducting international cargo and passenger transportation services to the territories of the Member States in vehicles registered in Ukraine;

(b) members of train, refrigerator and locomotive crews in international trains, travelling to the territories of the Member States;

- (c) persons participating in scientific, cultural and artistic activities, including university and other exchange programmes, who regularly travel to the Member States;
- (d) participants in international sports events and persons accompanying them in a professional capacity;
- (e) participants in official exchange programmes organised by twin cities and other municipal entities;
- (f) representatives of civil society organisations travelling regularly to Member States for the purposes of educational training, seminars, conferences, including in the framework of exchange programmes;
- (g) for participants in official EU cross-border cooperation programmes, such as under the European Neighbourhood and Partnership Instrument (ENPI);
- (h) students and post-graduate students who regularly travel for the purposes of study or educational training, including in the framework of exchange programmes;
- (i) for representatives of the religious communities;
- (j) for members of the professions participating in international exhibitions, conferences, symposia, seminars or other similar events held in the territory of the Member States;
- (k) persons needing to visit regularly for medical reasons and necessary accompanying persons.

By way of derogation from the first sentence, where the need or the intention to travel frequently or regularly is manifestly limited to a shorter period, the term of validity of the multiple-entry visa shall be limited to that period.

3. Diplomatic missions and consular posts of the Member States shall issue multiple-entry visas with the term of validity of a minimum of two years and a maximum of five years to the categories of persons referred to in paragraph 2 of this Article, provided that during the previous two years they have made use of the one year multiple-entry visas in accordance with the laws on entry and stay of the visited State unless the need or the intention to travel frequently or regularly is manifestly limited to a shorter period, in which case the term of validity of the multiple-entry visa shall be limited to that period."

[Article 6 of the Agreement

Fees for processing visa applications]

(7) Article 6 shall be amended as follows:

(a) paragraph 3 shall be replaced by the following:

"3. The Member States shall charge a fee of EUR 70 for processing visas in cases where, based on the distance between the applicant's place of residence and the place where the application has been submitted, the applicant has requested that a decision on the application be taken within three days of its submission, and the consulate has accepted to take a decision within three days."

(b) paragraph 4 shall be amended as follows:

(i) the first sentence shall be replaced by the following:

"4. Without prejudice to paragraph 5 fees for processing the visa application are waived for the following categories of persons:"

(ii) in point (a) the following words shall be inserted:

"or citizens of the European Union residing in the territory of the Member State of which they are nationals"

(iii) in point (i) the following words shall be inserted:

"and other municipal entities"

(iv) in point (j) the following words shall be inserted:

"and the technical crew accompanying them in a professional capacity"

(v) the following points (o) to (s) shall be inserted:

"(o) representatives of the religious communities;

(p) for members of the professions participating in international exhibitions, conferences, symposia, seminars or other similar events held in the territory of the Member States;

(q) participants aged 25 years or less in seminars, conferences, sports, cultural or educational events, organised by non-profit organisations;

(r) representatives of civil society organisations undertaking trips for the purposes of educational training, seminars, conferences, including in the framework of exchange programmes;

(s) for participants in official EU cross-border cooperation programmes, such as under the European Neighbourhood and Partnership Instrument (ENPI)."

(vi) the following sentence shall be inserted:

"The first sentence shall apply also where the purpose of the journey is transit."

(c) the following paragraph shall be inserted:

"5. If a Member State cooperates with an external service provider in view of issuing a visa the external service provider may charge a service fee. This fee shall be proportionate to the costs incurred by the external service provider while performing its tasks and shall not exceed EUR 30. The Member States shall maintain the possibility for all applicants to lodge their applications directly at their consulates. If applicants are required to obtain an appointment for the lodging of an application the appointment shall, as a rule, take place within a period of two weeks from the date when the appointment was requested."

[Article 10 of the Agreement

Diplomatic passports]

(8) Article 10 shall be amended as follows:

(a) the title shall be replaced by the following:

"Diplomatic and service passports";

(b) in paragraph 2, which shall be renumbered 3, the words "in paragraph 1" shall be replaced by "in paragraphs 1 and 2";

(c) a new paragraph 2 shall be inserted as follows:

"2. Citizens of Ukraine, holders of valid biometric service passports can enter, leave and transit through the territories of the Member States without visas."

[Article 12

Joint Committee for management of the Agreement]

(9) Article 12 paragraph 1 shall be amended as follows:

(a) in the first sentence the word "Community" shall be replaced by the word "Union";

(b) in the second sentence, the word "Community" shall be replaced by the words "European Union" and the words "Commission of the European Communities" by the words "European Commission".

[Article 13 of the Agreement

Relation of this Agreement with bilateral Agreements between Member States and Ukraine]

(10) The existing paragraph shall be numbered 1 and the following new paragraph 2 shall be inserted:

"2. The provisions of bilateral Agreements or arrangements between individual Member States and Ukraine concluded before the entry into force of this Agreement providing for the exemption of the holders of non-biometric service passports from the visa requirement shall continue to apply without prejudice to the right of the Member States concerned or Ukraine to denounce or suspend these bilateral agreements or arrangements."

Article 2

This Agreement shall be ratified or approved by the Parties in accordance with their respective procedures and shall enter into force on the first day of the second month following the date on which the last Party notifies the other that the procedures referred to above have been completed.

Done at XXX, on the XXX day of XXX in the year two thousand and twelve, in duplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak,

Slovenian, Spanish, Swedish and Ukrainian languages, each of these texts being equally authentic.

For the European Union

For Ukraine

EUROPEAN UNION DECLARATION ON DOCUMENTS TO BE SUBMITTED WHEN APPLYING FOR SHORT-STAY VISAS

The European Union will establish a harmonised list of supporting documents, in accordance with Article 48 paragraph 1 lit. a of the Visa Code, in order to ensure that applicants from Ukraine are required to submit, in principle, the same supporting documents.

EUROPEAN UNION DECLARATION ON FACILITATIONS FOR FAMILY MEMBERS

The European Union takes note of the suggestion of Ukraine to give a wider definition to the notion of family members that should benefit from visa facilitation as well as of the importance that Ukraine attaches to the simplification of movement of this category of persons.

In order to ease the mobility of an extended number of persons which have family links (in particular sisters and brothers and their children) with citizens of Ukraine legally residing in the territories of Member States or with citizens of the European Union residing in the territory of the Member State of which they are nationals, the European Union invites the Member States' consular offices to make full use of the existing possibilities in the Visa Code for facilitating the issuance of visas to this category of persons, including in particular, the simplification of documentary evidence requested for the applicants, exemptions from handling fees and, where appropriate, the issuing of multiple-entry visas.

EUROPEAN UNION DECLARATION ON ARTICLE 10 PARAGRAPH 2 OF THE AGREEMENT

The European Union may invoke a partial suspension of the Agreement and in particular of Article 10 paragraph 2, in accordance with the procedure set up by Article 14 paragraph 5 of the Agreement, if the implementation of Article 10 paragraph 2 is abused by Ukraine or leads to a threat to public security. If the implementation of Article 10 paragraph 2 is suspended, the European Union shall initiate consultations in the framework of the Committee set up by the Agreement with a view to solving the problems that led to the suspension.

JOINT DECLARATION CONCERNING SWITZERLAND AND LIECHTENSTEIN

The Parties take note of the close relationship between the Union and Switzerland and Liechtenstein, particularly by virtue of the Agreement of 26 October 2004 concerning the association of these countries with the implementation, application and development of the Schengen acquis.

In such circumstances, it is desirable that the authorities of Switzerland and Liechtenstein and Ukraine conclude, without delay, bilateral agreements on the facilitation of the issuance of short-stay visas in similar terms as the amended Agreement.